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IN THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF ALAMEDA
BEFORE THE HONORABLE TARA M. DESAUTELS, JUDGE
DEPARTMENT NUMBER 3

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 Plaintiff,) No. H57644
)
 vs.)
)
 MELISSA HO,)
)
 Defendant.)
)

REPORTER'S PARTIAL TRANSCRIPT

THURSDAY, FEBRUARY 2, 2017

RENE C. DAVIDSON COURTHOUSE
OAKLAND, CALIFORNIA

A P P E A R A N C E S

FOR THE PEOPLE: ANGELA BACKERS
Deputy District Attorney

FOR THE DEFENDANT: DANIEL HOROWITZ
Attorney at Law

REPORTED BY: Danielle A. DeWarns, CSR #9743

1 THURSDAY, FEBRUARY 2, 2017

AFTERNOON SESSION

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P R O C E E D I N G S

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THE COURT: Thank you, sir. You can step down.

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Ms. Backers, would you like to call your next

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witness?

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MS. BACKERS: Yes. Dr. Paul Herrmann. Please step

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forward.

10

DR. PAUL HERRMANN

11

called as a witness by the People,

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having been first duly sworn, was

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examined and testified as follows:

14

THE CLERK: Thank you, sir. Please be seated.

15

Sir, could you please state and spell your name for

16

the record?

17

THE WITNESS: It's Paul Herrmann. P-a-u-l.

18

H-e-r-r-m-a-n-n.

19

THE CLERK: Thank you.

20

THE COURT: Thank you.

21

Ms. Backers.

22

MS. BACKERS: Thank you.

23

DIRECT EXAMINATION

24

MS. BACKERS: Q. Dr. Herrmann, are you a medical

25

doctor?

26

A. Yes.

27

Q. How long have you been a medical doctor?

28

A. Since 1961.

1 Q. All right. And are you licensed as a medical doctor?

2 A. Yes.

3 Q. Would you briefly describe your training to become a
4 medical doctor including your licensing and specialty?

5 A. Well, I went to college and medical school at
6 Washington University in St. Louis. I got my M.D. degree in
7 1961. I took an internship in Minneapolis, and I was drafted
8 into the Army, spent two years there, and then I came back to
9 Minneapolis and took a year of training in internal medicine.

10 At the end of that year, I decided to go into
11 pathology so I went back to Washington University. During my
12 time there, I took two weeks of absence, one, to study
13 forensic pathology at the office of the Chief Medical Examiner
14 in New York City and another year of leave of absence to study
15 laboratory medicine at the Lenox Hill Hospital also in New
16 York City.

17 So I finished my training at Washington U. in 1970
18 and came to Oakland and joined the group of pathologists here
19 known as Western Labs, and I've been in this area ever
20 since.

21 Q. And when would you say that you became a medical
22 doctor? What year is that? '70?

23 A. '61.

24 Q. 1961. And would you tell this jury, please, what
25 pathology is and then what forensic pathology is?

26 A. Well, pathology is one of the specialties of medicine,
27 like surgery or obstetrics, or what have you. It requires
28 additional training after graduation from medical school.

1 And, essentially, pathologists do three things. We look at
2 tissues and fluids and in the chemistry laboratory to see if
3 there's evidence of disease, and we also look at tissues that
4 surgeons have removed from people. We look at those tissues
5 under the microscope to see if a disease is present and try to
6 identify what kind it is so the patient can be properly
7 treated. We also perform autopsies to determine the cause of
8 death.

9 Forensic pathology requires an additional year of
10 training and pathology and, essentially, we do the same thing
11 except that we do it in cases that have legal significance as
12 well as medical significance.

13 Q. And so when did you become a forensic pathologist?

14 A. 1968.

15 Q. And is that when you came to Oakland, or was it a
16 little bit later?

17 A. I came to Oakland in 1970.

18 Q. Okay. And do you have any certifications?

19 A. Well, I'm certified by the American Board of Pathology
20 and Anatomic and Clinical Pathology as well as Forensic
21 Pathology.

22 Q. All right. Sir -- and your military service was '62 to
23 '64?

24 A. Something like that.

25 Q. Okay. And then when you came to Oakland, what did you
26 start doing?

27 A. Well, I did the things that I had been doing before. I
28 became the head of the Laboratory at Alameda Hospital, so I

1 was doing hospital pathology, looking at tissues from people
2 and looking in the laboratory. And I continued at that time
3 to also perform autopsies for the Alameda County Coroner's
4 Office, so I continued to do that throughout my career with
5 Western Labs.

6 Q. And do you still perform autopsies?

7 A. Yes.

8 Q. All right. So is it correct to say that you've been
9 performing autopsies since 1970?

10 A. No, since about 1961.

11 Q. '61, okay.

12 And when you were working with the laboratories,
13 were you one of the directors of the laboratory?

14 A. Yes. We had a large clinical laboratory in Oakland,
15 and we also had a toxicology laboratory there, and I was the
16 director of that starting in 1975 and continuing until
17 something like 2004.

18 Q. Okay. And were you the director the whole time?

19 A. Yes.

20 Q. From '75 to 2004?

21 A. I don't remember the exact date when I stopped, but it
22 was somewhere around there.

23 Q. Okay. And in this particular case, you did not perform
24 the autopsy; is that right?

25 A. No, I didn't do an autopsy in this case.

26 Q. So -- however, you were asked to review some medical
27 records regarding Melissa Ho, the defendant in this case; is
28 that right?

1 A. Yes.

2 Q. And did you get those in either 2014 or 2015, if you
3 know?

4 A. I don't remember the date that I got them.

5 Q. Okay.

6 A. I think it was about 2014, but I'm not sure.

7 Q. And were you basically being used as a consultant to
8 render an opinion about some substances?

9 A. Yes.

10 Q. And could you tell the jury, to the best of your
11 recollection, what it is that you reviewed back there in 2014
12 or '15?

13 THE COURT: Before we go there, I'm going to
14 interrupt for one second. I wasn't sure if this is the basis
15 of one of the stipulations as to Dr. Herrmann's expertise or
16 if there was any additional voir dire before certification.

17 MS. BACKERS: Oh, there is not a stipulation as to
18 what you just asked about, Judge. There is a stipulation as
19 to the urine draw, for lack of a better word.

20 THE COURT: So are you offering Dr. Herrmann as an
21 expert?

22 MS. BACKERS: I'm offering Dr. Herrmann as an expert
23 forensic pathologist qualified to talk about substances and
24 their effects and combinations of substances and -- including
25 alcohol.

26 THE COURT: Substances and their effects on the
27 human body?

28 MS. BACKERS: Yes, thank you.

1 THE COURT: And, Mr. Horowitz, would you like any
2 voir dire?

3 MR. HOROWITZ: Yes. We accept the forensic
4 pathology expertise, and we accept his expertise in urine
5 testing and blood testing results and all topics of that type.
6 We wish to voir dire if he's being offered in terms of drug
7 interactions and effects on which parts of the brain -- what
8 brain receptors. I don't think he's being offered for that.

9 THE COURT: Let's clarify.

10 Is he being offered for that?

11 MS. BACKERS: Yes, he is.

12 THE COURT: Would you like to voir dire on that
13 point, Mr. Horowitz?

14 MR. HOROWITZ: Yes, please.

15 THE COURT: Go ahead.

16 VOIR DIRE EXAMINATION

17 MR. HOROWITZ: Q. Truthfully, I trust your opinion,
18 I just don't know the answer. Are you an expert, for example,
19 in the different cannabinoids and where they attach, you know,
20 whether in the brain, the stomach or other parts of the body,
21 for example?

22 A. Well, to some extent, yes.

23 Q. Let me just push it a little bit. How many
24 cannabinoid-type receptors are you familiar with in the human
25 body? Not the number of receptors but the types.

26 A. No. I don't know anything about the receptors.

27 Q. Do you know the mode of action of benzodiazepines on
28 the brain other than just the generic, you know, sense that

1 they can be used for anxiety, but do you actually know the
2 brain function of them?

3 A. I'm not sure what you mean by the "brain function."

4 Q. Do you know, for example, what parts of the brain
5 benzodiazepines act upon?

6 A. I'm not sure of any parts they act on. I don't know
7 exactly which parts.

8 Q. Okay. And are you aware of any studies that talk about
9 the duration of the activity of the different benzodiazepines
10 currently on the market?

11 A. Yes. Yes, I know something about that.

12 Q. How much? Enough to be an expert or just to be a
13 treating doctor or a pathologist? You understand what I'm
14 getting at? How much do you know?

15 A. Well, I probably know as much as most people do about
16 the effects of it and how long it lasts in the body, if that's
17 what you mean.

18 Q. For example, what is the half life of Xanax? Do you
19 know?

20 A. Well, I'd have to look it up. I have it in front of
21 me, but I don't know exactly what it is. It's a number of
22 hours, though. It lasts a fairly long period of time.

23 Q. Actually, Xanax is known as one of the shortest acting
24 benzodiazepines.

25 A. I'll tell you what the half life --

26 Q. Don't look. I'm testing your expertise, not whether
27 you can read something, please.

28 A. I stand by my first statement.

1 Q. You think it's a long acting benzodiazepine?

2 A. Well, it lasts a number of hours. I think that's long
3 acting like maybe up to seven or eight hours.

4 Q. How about Valium?

5 A. Valium, I don't know exactly what the half life is. I
6 didn't look that up.

7 Q. Where did you look up the Xanax half life?

8 A. I'm sorry?

9 Q. Where did you look up the half life of Xanax?

10 A. Why did I look it up?

11 Q. No, where?

12 A. In Basil's book on toxicology.

13 Q. Sure it didn't say two hours?

14 A. Well, I don't know. I think it said somewhere between
15 four and seven hours. These things vary. They're not always
16 the same all the time.

17 Q. When is the last time you read any study on the
18 duration of effects of Xanax?

19 A. I believe yesterday.

20 Q. What study did you read?

21 A. Again, Basil's book.

22 Q. So you just read a reference book, but no studies?

23 A. I didn't read any studies. He cites a number of
24 studies in his book, but I didn't read the studies.

25 Q. Same question as to cocaine, what studies have you read
26 about the duration of action of cocaine?

27 A. Well, I don't remember what I've read over the years,
28 but yesterday I reviewed it in Basil's book again.

1 Q. Is that the only source of information you have about
2 the duration of action of cocaine?

3 A. Oh, no. I've been talking about cocaine and testifying
4 about cocaine for many, many years, but I don't recall any of
5 the studies that I've read.

6 Q. Have you ever testified about the effects of cocaine on
7 a person who didn't die?

8 A. Who what?

9 Q. Did not die?

10 A. Oh, sure.

11 Q. Okay. And have you talked -- have you ever been asked
12 before to talk about how long cocaine affects the brain?

13 A. I probably have.

14 Q. Do you recall specifically, not probably, but
15 actually?

16 A. I don't recall any specific time when I was asked,
17 no.

18 Q. Do you have any training in toxicology, specifically?

19 A. My training in toxicology was simply as running the
20 laboratory and talking with physicians about the findings in
21 the laboratory.

22 Q. Do you have any background in neurology?

23 A. Only studying it in medical school and whenever I had a
24 case that involved a neurological case.

25 Q. Do you have any background in addiction medicine?

26 A. In what?

27 Q. Addiction medicine?

28 A. No. I don't study addiction medicine.

1 MR. HOROWITZ: I have nothing further. I object to
2 that qualification.

3 THE COURT: Thank you. Let me just ask a follow-up.
4 Dr. Herrmann, have you been qualified as an expert
5 in court before, specifically, as a forensic pathologist
6 qualified to testify as to the effect of substances on the
7 human body?

8 THE WITNESS: The effect of what?

9 THE COURT: Substances on the human body.

10 THE WITNESS: Yes, many times. For many, many years
11 I testified with two other people on the effects of alcohol
12 and drugs on persons who have been driving, and over the years
13 I've also testified on the effects of drugs on people who had
14 died and upon whom I had performed an autopsy.

15 MR. HOROWITZ: I have no objection to that area.
16 It's to the -- it's just to my limited area. Basically the
17 area of toxicology versus the basic medicine of drinking and
18 driving or drugs and driving.

19 THE COURT: Continuing to follow up.

20 How many times have you qualified as an expert in
21 the area that we had just discussed, the effects of substances
22 on a human body including alcohol and drugs?

23 THE WITNESS: Oh, I never counted. I wouldn't be
24 surprised if it was 50 to a hundred times.

25 THE COURT: All right. So at this time Dr. Herrmann
26 will be qualified as an expert forensic pathologist able to
27 testify as to the effects of substances including alcohol and
28 drugs on the human body.

1 Ms. Backers?

2 MS. BACKERS: Yes, thank you.

3 (Resumed)DIRECT EXAMINATION

4 MS. BACKERS: Q. So, Dr. Herrmann, did I give you a
5 list of drugs that I wanted to be able to ask you questions
6 about?

7 A. Yes.

8 Q. And you got that list a few weeks ago, maybe a week
9 ago?

10 A. Yes, about a week ago.

11 Q. A week ago, okay. And the first drug that I asked if
12 you would be able to tell the jury about is Trazodone,
13 correct?

14 A. Yes.

15 Q. T-r-a-z-o-d-o-n-e. Can you tell the jury what that is,
16 please?

17 A. Well, Trazodone is an antidepressant. It's used
18 sometimes in psychotic situations. It's also used in people
19 that have acute anxiety reactions or simply are depressed or
20 have chronic anxiety. It is an antidepressant.

21 Q. It is an antidepressant?

22 A. Yes.

23 Q. Would you say it's a stimulant or the opposite of a
24 stimulant?

25 A. No, it's not a stimulant. It's the opposite of a
26 stimulant.

27 Q. What is the opposite of a stimulant?

28 A. A central nervous system depressant.

1 THE COURT: Doctor, if you would, can you actually
2 back up, either you or the microphone, a little bit because
3 we're getting a little interference. Thank you.

4 MS. BACKERS: Q. So Trazodone is a central nervous
5 system depressant? Is that what you said, sir?

6 A. Yes.

7 Q. All right. Doctor -- and because it is a central
8 nervous system depressant, are there warnings that you should
9 not combine it with alcohol?

10 MR. HOROWITZ: Objection. Hearsay. I thought he's
11 an expert. I would ask for his knowledge.

12 THE COURT: Can you clarify to his knowledge?

13 MS. BACKERS: Q. Doctor, in your expert opinion,
14 are there warnings that say you do not combine Trazodone with
15 alcohol?

16 A. Well, there are, yes.

17 Q. And what is the warning?

18 A. Well, it's simply to the effect that alcohol may cause
19 more of a depressant effect than the original drug does. Now,
20 when people take this drug, they become somewhat tolerant to
21 it. So over a period of time they have fewer and fewer
22 effects, and you don't become as drowsy or as confused as they
23 might when they first started taking it.

24 But if you take alcohol in addition to that, both of
25 these drugs are depressants, so there's an additive effect and
26 the effect of the Trazodone as well as the alcohol is greater
27 than the Trazodone itself.

28 Q. And what effect, in your opinion, would you expect to

1 have on the human body if you combine Trazodone and alcohol?

2 A. Well, it would be essentially the same as having too
3 much alcohol in a way because it causes people to become
4 lethargic, somewhat drowsy and somewhat sleepy. You pay less
5 attention to things particularly if they're driving a car, so
6 it is just simply a depressant.

7 Q. And did I also ask you if you would be able to talk to
8 this jury about a different prescription, Gabapentin,
9 g-a-b-a-p-e-n-t-i-n?

10 A. Yes.

11 Q. **And could you tell the jury what that is?**

12 **A. Well, Gabapentin** is a specific drug. It interferes
13 with some of the neurotransmitters in the nervous system. In
14 a way it's also a depressant. People, when they first start
15 taking the drug, will notice some lethargy, some sleepiness,
16 drowsiness, maybe even confusion. And when it's combined with
17 other things such as Trazodone or alcohol, it has an even
18 greater effect.

19 Q. Would you have a similar type of warning with
20 Gabapentin not to combine it with alcohol?

21 A. Oh, sure.

22 Q. If you were on both Trazodone and Gabapentin and then
23 added alcohol to that combination, is that three
24 depressants?

25 A. Well, it's three depressants, yes.

26 Q. And so I'm assuming there would be a warning not to
27 combine those two prescriptions with alcohol?

28 A. Well, I don't know if there's a specific warning

1 written somewhere, but it will certainly be a very bad idea to
2 do that.

3 Q. Why would it be a bad idea?

4 A. Well, because alcohol would add to the effect of the
5 other two drugs.

6 Q. Okay. And if you took Trazodone and Gabapentin, just
7 the two of those, would you expect to have an effect on the
8 body of sleepiness or dizziness?

9 A. Well, you certainly may, but, as I say, there are other
10 people who on the drugs, such as this, who over a period of
11 time become somewhat tolerant to it so they can drive a car or
12 do other things that might be somewhat dangerous and do it
13 reasonably well. But certainly when one begins, or if one
14 stops taking the drug and then goes back on them, one loses
15 the tolerance. And certainly if one takes too much of it,
16 then the drowsiness, the sleepiness will be apparent again.

17 Q. And so if you were on both of those prescriptions,
18 Trazodone and Gabapentin and combined them with alcohol, for
19 instance, that would be like three depressants that would
20 cause you to be drowsy, I take it?

21 A. Well, it certainly could, and it probably would.
22 Alcohol, in addition to those, would be a very bad idea. I
23 mean, it's all right if you're going to sit around at home and
24 watch television. If you're going to do something dangerous
25 like driving a car, that's a different story.

26 Q. All right. What if you added marijuana to that
27 combination, alcohol, those two prescriptions and then smoked
28 a joint or smoked marijuana from a bong?

1 A. Well, marijuana is not terribly -- or hasn't been as
2 well studied as many of these other drugs. But marijuana does
3 have a calming effect, a somewhat drowsy effect, to some
4 people. Again, if people are used to taking it, the effects
5 are less than they might be for someone who is not used to it.
6 But it also is a depressant to the central nervous system. So
7 it would -- alcohol in addition to marijuana would be a
8 combination of two depressants. You add the other two drugs
9 to it, and you have even more depressants that are active at
10 that time.

11 Q. All right. And, sir, if you were taking Trazodone and
12 you took a blood sample, what would Trazodone show up as in
13 that blood sample?

14 A. Well, it will show up as Trazodone. If you try to look
15 for it, it shows up as a benzodiazepine. It's a class of
16 drugs but then --

17 MR. HOROWITZ: I'm sorry. I didn't hear. It shows
18 up as?

19 THE WITNESS: Benzodiazepine.

20 MR. HOROWITZ: Thank you.

21 MS. BACKERS: Q. And would you tell the jury what a
22 benzodiazepine is?

23 A. Trazodone is not a benzodiazepine. Trazodone is
24 related to the tricyclic antidepressants. It's not a
25 benzodiazepine.

26 Q. You said Trazodone is not?

27 A. No.

28 Q. You said it's related to something else?

1 A. It's related to other antipsychotic drugs somewhat
2 related to a group of drugs known as the tricyclic
3 antidepressants.

4 Q. Tricyclic?

5 A. Yes.

6 Q. I know I'm going to be asked how to spell that later.
7 I want to make sure I heard you. If you did a blood test for
8 Trazodone do you know how it would show up in the blood
9 test?

10 A. It would show up as Trazodone.

11 Q. And what about Gabapentin, do you know how that would
12 show up in a blood test?

13 A. It would show up as Gabapentin.

14 Q. Can you tell us what THC is compared to marijuana? I
15 asked you about marijuana. What is THC?

16 A. Well, THC is the parent drug of tetrahydrocannabinol.
17 It's also known as Delta 9 or Delta 1 cannabinol. Smoking it
18 is the active substances or one of the active substances in
19 marijuana.

20 Q. So if someone had smoked marijuana, would it show up as
21 marijuana in a test or would it show up as THC?

22 A. Depends on the test that you do. If you do a blood
23 test, you can find THC, but it usually just shows up as one of
24 the breakdown products.

25 Q. Say that again?

26 A. It usually shows up as one of the breakdown products.

27 Q. Breakdown. So if you had a urine test instead of a
28 blood test, what would marijuana show up as, if you know?

1 A. Well, it will show up as any of the -- any of the
2 breakdown products, and it's usually just reported as a
3 cannabinoid.

4 Q. What is methamphetamine, Doctor?

5 A. Methamphetamine is a stimulant drug. It's a stimulant
6 to the central nervous system.

7 Q. And what is amphetamine?

8 A. Amphetamine is also a stimulant drug. The two are very
9 much related. Methamphetamine, if it's taken or smoked or
10 taken intravenously or by mouth, or whatever, that breaks down
11 to amphetamine in the body.

12 Q. And what is Xanax?

13 A. Xanax is a -- another depressant drug. It is an
14 antidepressant, and it is a benzodiazepine -- from the class
15 of drugs known as benzodiazepine.

16 Q. And in your expert opinion, would it be a good idea to
17 combine Xanax with alcohol?

18 A. No, it would not.

19 Q. What's the reason?

20 A. It would be somewhat additive to their effect.

21 Q. Because they're both depressants?

22 A. Yes.

23 Q. So if you were on Trazodone and Gabapentin and then you
24 drank alcohol, smoked marijuana and took a Xanax, does that
25 mean you're on five depressants?

26 A. It does.

27 Q. So is it correct, Doctor, that amphetamine and
28 methamphetamine are the opposite of the five drugs I just

1 mentioned to you? In other words, they are not depressants?

2 A. No, they're not depressant drugs. They're stimulant
3 drugs.

4 Q. Stimulants, okay. Now, what is morphine?

5 A. Morphine is an opiate substance.

6 Q. Is that a depressant?

7 A. Yes.

8 Q. And Zofran, Z-o-f-r-a-n, what is that?

9 A. Zofran is a drug given for nausea. It may be somewhat
10 depressant, also. It may cause people to be somewhat sleepy,
11 but it doesn't have very strong effects in that regard.

12 Q. It's typically used for nausea?

13 A. Yes.

14 Q. And what about Dilaudid?

15 A. Dilaudid is another opiate drug. It is a central
16 nervous system depressant and an analgesic like morphine.
17 It's also known as hydromorphone.

18 Q. If you were looking at a test, would it show up as
19 hydromorphone?

20 A. It would show up as hydromorphone.

21 Q. Dilaudid would?

22 A. Yes.

23 Q. And then what about cocaine? You said you testified
24 many times about cocaine. What is that?

25 A. Well, it's very similar to amphetamine and
26 methamphetamine. It's a central nervous system stimulant.

27 Q. And, lastly, Adderall, what is that?

28 A. Adderall is really amphetamine.

1 Q. In fact, if someone takes Adderall and you tested for
2 it, would it show up as an amphetamine?

3 A. Yes.

4 Q. Is Adderall the prescription name?

5 A. It's a trade name.

6 Q. Trade name. Is it correct, Doctor, that in your expert
7 opinion, for any depressant, you should not drink alcohol?

8 A. Well, it depends on what you're going to be doing. If
9 you're going to be doing something that's dangerous and
10 requires a skill, you should not, no.

11 Q. And, in fact, you've testified in Driving Under the
12 Influence cases in cars, right?

13 A. Yes.

14 Q. And driving a car requires something that experts call
15 "divided attention," right?

16 A. It does.

17 Q. What is divided attention? Would you explain that to
18 the jury?

19 A. It's probably the most important thing in driving a
20 car. As we drive a car, we have to pay attention to all kinds
21 of things that are going on around us. We're driving down the
22 street. We have to see if a light is turning red or green.
23 We have to be aware of how close cars are next to us or if a
24 car is about to come out from the side street, whether a child
25 is about to run in the street, whether a bicycle is coming
26 down the street. You have to pay attention to all these
27 things all at the same time. And alcohol and depressants
28 interfere with our ability to do that.

1 Q. So if someone said I was drowsy and wasn't really
2 paying attention, that would be a problem for the skill of
3 driving a car safely, correct?

4 A. It certainly would, yes.

5 Q. And if someone was on five depressants, that would be a
6 problem for driving a car, right?

7 A. It certainly could be.

8 Q. Okay. Now, would you be able to tell the jury the --
9 what records you actually reviewed on this case, if you
10 know?

11 A. No. I don't recall. It was sometime ago that I
12 actually reviewed some of the records. I actually reviewed
13 some of them today that were given to me by the Defense
14 attorney. But I wrote a paragraph sometime ago after looking
15 at the medical records, and I don't recall which records I
16 actually looked at. I still have a copy of what I wrote, but
17 I don't recall what the records were.

18 Q. And I have a copy of the e-mail you wrote, and the date
19 of the e-mail that you wrote is January 10th, 2015, correct?

20 A. Well, if that's what you say.

21 Q. Will you take a peek at it? Do you have it with you?

22 A. Sure. Yeah, that's right. January 10th, 2015.

23 Q. And you wrote to a D.A. in Fremont named Scott
24 Swisher?

25 A. Yes.

26 MR. HOROWITZ: May we mark anything that the witness
27 is reviewing right now?

28 THE COURT: Do we have a separate copy of the

1 e-mail?

2 MS. BACKERS: Well, I've provided it to Counsel, but
3 I don't have a clean copy, but I'd be happy to get one at the
4 break.

5 MR. HOROWITZ: Whatever he looked at. He looked at
6 something.

7 THE COURT: Dr. Herrmann, did you look at the e-mail
8 from January 10th, 2015, to District Attorney Scott Swisher?

9 THE WITNESS: I'm sorry, did I do what?

10 THE COURT: Just now when you were looking at your
11 papers, we're trying to figure out what you were looking at.
12 Was it the e-mail that was just referenced which is
13 purportedly from January 10th, 2015, to Scott Swisher?

14 THE WITNESS: Yes, it was.

15 THE COURT: Were you looking at anything else just
16 now?

17 THE WITNESS: Oh, no.

18 THE COURT: Okay. So, if you wish, we can have that
19 e-mail marked and we'll move that into evidence when we have a
20 clean copy.

21 MS. BACKERS: Thank you, judge.

22 Q. So without -- without actually having the records
23 before you, you do have the e-mail that summarized your
24 opinion that you gave to Scott Swisher on January 10th of
25 2015, correct?

26 A. Yes.

27 Q. And were you being asked, sir, if you could say that
28 Ms. Ho was driving under the influence of alcohol?

1 A. Yes. That was one of the things that Mr. Swisher
2 wanted to know.

3 Q. And did you say to Mr. Swisher, based on your expert
4 opinion and your review of whatever the records were, that
5 because it was a urine test, you could not say for certain
6 whether she was driving under the influence of drugs and
7 alcohol?

8 A. That's correct.

9 Q. And were you looking at the results of a urine test
10 rather than a blood test in the hospital?

11 A. Yes, that's right.

12 Q. Would you tell the jury, besides the obvious, the
13 difference between blood and urine? Is there something
14 specific about a urine test that accumulates drugs and
15 alcohol?

16 A. Well, it does accumulate, drugs and alcohol. And what
17 is being tested at the time may represent something that a
18 person took sometime before and has already disappeared from
19 the blood but it's still appearing in the urine, and that's
20 why a urine test is not very good for determining whether
21 someone is doing something under the influence of a drug.

22 Q. So if you were going to have a case that was a Driving
23 Under the Influence case, you, as a doctor -- expert, would
24 prefer a blood test?

25 A. Oh, yes.

26 Q. And that's because -- well, why don't you tell the
27 jury. Why is that? Why is the blood test better?

28 A. Well, the blood test will tell me, of course, what is

1 in the system at that time, what's circulating through the
2 brain. A urine test doesn't tell you that.

3 Q. And I don't know if it was you -- we've known each
4 other for decades, right?

5 A. I think we have.

6 Q. I don't know if it was you, but one doctor explained to
7 me that the urine test and the bladder is like a bathtub with
8 the plug in where drugs and alcohol kind of accumulate in your
9 bladder so you can't really say what's running through the
10 blood. Is that true?

11 A. That's a good way to put it, sure.

12 Q. It might have been you. I don't know who taught me
13 that.

14 A. That's about right.

15 Q. Okay. Now, in whatever records you did review from
16 Mr. Swisher, did you review some medical records that
17 indicated that once Ms. Ho arrived at the hospital, Ms. Ho was
18 given some drugs at the hospital?

19 A. That's right.

20 Q. And is that morphine, Zofran and Dilaudid?

21 A. Yes.

22 Q. Did you record the time that those drugs were provided
23 to Ms. Ho in your e-mail to Mr. Swisher?

24 A. I think I recorded it as approximately, at approximate
25 times.

26 Q. Do you need to look at the e-mail to refresh your
27 memory?

28 A. I would.

1 MS. BACKERS: May he, your Honor?

2 THE COURT: Yes, he may.

3 Please only look at the e-mail. If you need to look
4 at anything else, please let me know.

5 THE WITNESS: (Witness looks at paperwork.) What
6 was the question again?

7 MS. BACKERS: Q. Did you record the time that the
8 morphine -- let's do it one at a time -- that the morphine was
9 provided to Ms. Ho?

10 A. No. All I said was that it was about the same time
11 that the urine was obtained.

12 Q. Okay. And you did record the time that the urine was
13 obtained, correct?

14 A. Yes.

15 Q. And that's at 1335 hours?

16 A. That's right.

17 Q. So --

18 A. On August 16th.

19 Q. Right. So on August 16th, 1335 hours of 2014, you
20 recorded in your e-mail to Mr. Swisher that the urine was
21 collected, I guess is the best word, collected at about 1335
22 hours, correct?

23 A. That's right.

24 Q. And is it your opinion now, Doctor, that the jury
25 shouldn't consider the morphine and the Dilaudid because the
26 hospital provided those drugs to her when she got to
27 San Jose?

28 A. Well, that's right.

1 Q. So there were somewhat I would call prescription drugs
2 or street drugs that are not morphine and Dilaudid or Zofran
3 that you did review as well, correct?

4 A. Yes.

5 Q. And what were those drugs?

6 A. Cocaine and marijuana.

7 Q. And you're saying those are what I call "street drugs,"
8 cocaine and marijuana?

9 A. Yes.

10 Q. And if Ms. Ho told the police, I was on Trazodone. I
11 was on Gabapentin. I smoked marijuana. I drank beer, alcohol
12 and I took a Xanax, what would you expect to see in her urine?
13 What would show up in her urine?

14 A. I don't know. It depends on when she took it and when
15 she voided her bladder.

16 Q. Okay. What about -- how would those appear in her
17 blood, if you took the blood right after she had all those
18 things?

19 A. Well, you would find those drugs in her blood.

20 Q. Okay. So you would see cocaine, marijuana. Would the
21 marijuana show up as THC in the urine?

22 A. It might or it might just show up as -- as the
23 breakdown products. You can find marijuana in the urine for
24 many, many days after one use of it. And hardly any of it is
25 going to be the parent drug at that time.

26 Q. Okay. And cocaine, does that show up as cocaine in the
27 blood or in the urine?

28 A. Yes, and it also shows up as the breakdown product of

1 cocaine.

2 Q. Say that again?

3 A. It also shows up as the breakdown product known as
4 benzoylecgonine.

5 Q. Do you know how to spell that?

6 A. B-e-n-z-o-y-l-e-c-g-o-n-i-n-e.

7 Q. My court reporter and I thank you, sir.

8 A. Otherwise known as "BE."

9 Q. BE?

10 A. Yes.

11 Q. Okay. Now, if someone took a Xanax, what does that
12 show up in the urine and blood as?

13 A. I believe it would show up as Xanax.

14 Q. Is Xanax a benzodiazepine?

15 A. Yes. Xanax is a benzodiazepine.

16 Q. And Adderall, that's a stimulant?

17 A. That's essentially -- it is the same as amphetamine.

18 Q. Adderall and amphetamine are the same, right?

19 A. Yes.

20 Q. So I have two separate questions for you. Is it
21 correct that in your expert opinion you cannot say without
22 absolute certainty that Ms. Ho was driving under the influence
23 of any of those drugs that you found in the medical records?

24 A. Based on what is available to me, that's a true
25 statement.

26 Q. Okay. And you told Mr. Swisher that, right?

27 A. Yes.

28 Q. However, is it also true that you cannot say without

1 absolute certainty that she wasn't under the influence of any
2 of those drugs at the time of this fatal collision?

3 A. Well, that's true also.

4 Q. So you just can't say, right?

5 A. I can't say.

6 Q. However, in the records you reviewed, did they, in
7 fact, show a drug screen with benzodiazepine, cocaine, opiates
8 and marijuana?

9 A. You know, I believe -- re-looking at these records that
10 you showed me, I don't believe benzodiazepine showed up in
11 there.

12 Q. Let me show you Bate stamp page 15. Counsel.

13 MR. HOROWITZ: Thank you.

14 MS. BACKERS: Q. I don't know if this is one of the
15 records you reviewed, Dr. Herrmann, but let me show you this
16 page, and you can tell me if you know whether that's one of
17 the records you reviewed for your opinion.

18 A. Well, I don't know if I actually saw this page when I
19 wrote my opinion or not.

20 Q. Is that page helpful in telling you what showed up in
21 her system?

22 A. These are what are indicated in what's called an
23 admission diagnosis and the discharge diagnosis that is
24 written by a physician, not the laboratory. I would prefer to
25 see the lab test to tell you the truth.

26 Q. Okay.

27 A. But in here they have listed certain drugs that a
28 physician at the time that he wrote this thought that he found

1 in the urine.

2 Q. All right. And upon -- and I will find that on our
3 recess. On -- upon admission a medical doctor said she's got
4 amphetamine, methamphetamine, cocaine and THC, right?

5 A. Yes.

6 Q. And you would advise this jury to ignore the morphine
7 because it was given by the hospital? Was that your
8 opinion?

9 A. Well, they didn't say morphine. They didn't even
10 indicate that they found morphine.

11 Q. Okay, all right.

12 This would be a good time, Judge, if you want. I'll
13 look for that record.

14 THE COURT: So, ladies and gentlemen, we've been
15 going for quite some time this afternoon. So we're going to
16 take a slightly longer break than usual. That will give
17 everyone time to run outside or go downstairs if they need.
18 We'll have everybody come back at 3:15. So please remember
19 the admonition. Don't form any opinions. Do not discuss this
20 case. We will see you at 3:15.

21 (Recess taken.)

22 THE COURT: We're back on the record in the Ho matter. Both
23 counsel and Ms. Ho are present along with all of our jurors
24 and alternates.

25 In the break I understand the e-mail that we had
26 previously referenced as the January 10th, 2015, email to
27 District Attorney Scott Swisher has been marked for
28 identification.

1 What is that number, Ms. Backers?

2 MS. BACKERS: That is People's 14, Judge.

3 THE COURT: Thank you.

4 MS. BACKERS: If I could put one other matter on the
5 record?

6 THE COURT: You may.

7 MS. BACKERS: Thank you. I just printed out a new
8 copy of the e-mail that I sent to Bill Guo. It has been
9 marked People's 12 for identification, and the date I sent it
10 to Mr. Bill Guo is Tuesday, January 31st, 2017, at 5:26.

11 THE COURT: Thank you.

12 MS. BACKERS: And then 13 was a -- the discharge
13 summary sheet that I just showed the doctor, and he said he
14 would prefer to see a lab report and that is People's 15 that
15 I'm going to be showing him.

16 THE COURT: Hold on. Before you get there, let's
17 clarify for the record that Dr. Herrmann has resumed the stand
18 and he is, of course, still under oath.

19 Now, Ms. Backers.

20 MS. BACKERS: I'm sorry, Judge.

21 Q. Doctor, I showed you **People's 13** that was an admission
22 diagnosis and a discharge diagnosis and you said, yes, it
23 showed some things, but you would prefer to see an actual lab
24 report, correct?

25 A. Right.

26 Q. **And People's 15**, would you take a look at that and tell
27 me if it's an actual lab report?

28 A. Yes, this is.

1 Q. For Ms. Ho?

2 A. Yes.

3 Q. All right. And is there a date on that lab report?

4 A. It says 8/16/2014.

5 Q. So August 16th, 2014. Is there a time, sir, when the
6 results came in?

7 A. Well, there's a time. I don't know if that's the time
8 that the urine was collected at the time that they did the
9 test. I don't know.

10 Q. What is the time?

11 A. 1738 hours.

12 Q. Okay. So is that a better document for you to use to
13 say what was present in her urine sample?

14 A. Well, yes, this is -- this is a test of her urine.

15 Q. And what was her urine positive for on August 16th,
16 2014?

17 A. Well, it was positive for benzodiazepine, cocaine,
18 opiates and THC, marijuana.

19 Q. Okay. And we were talking before the break about Xanax
20 and would that show up in the urine as a benzodiazepine?

21 A. Yes.

22 Q. And you said cocaine, marijuana, benzodiazepine and
23 there was one more. Amphetamine?

24 A. Opiates.

25 Q. Opiates, okay. Now, depending on when the hospital
26 administered the morphine, if they had not yet administered
27 the morphine, then those opiates in the urine had to have come
28 from somewhere else, right?

1 A. If she didn't get it before the accident, it had to
2 have come before.

3 Q. And one of the things that you actually discussed in
4 your e-mail to Scott Swisher was that you didn't have the
5 ambulance records, the paramedics records, so you don't know
6 if the ambulance people gave her anything on the way to the
7 hospital; is that right?

8 A. That's right.

9 Q. Okay. However, if the hospital gave her morphine and
10 there were no opiates from any other source before the urine
11 draw, then that would come out as an opiate, right?

12 A. Yes.

13 Q. And do you see any Adderall present in that lab test
14 that you're looking at, People's 15?

15 A. No.

16 Q. Amphetamine?

17 A. No, it's not in here.

18 Okay. If I could just have a second, Judge?

19 (Brief pause.)

20 MS. BACKERS: Madam clerk, I'm going to mark one
21 more, please.

22 Q. In your e-mail to Mr. Swisher, which is People's 14,
23 Dr. Herrmann, you said the urine sample was collected around
24 1335 hours, correct?

25 A. Yes, that's what I saw.

26 Q. And the records you reviewed back then?

27 A. Yes.

28 Q. Okay. People's 16, Counsel.

1 (Whereupon People's Exhibit No. 16
2 was marked for identification.)

3 MS. BACKERS: I'm showing you People's 16, a set of
4 trauma notes. And let me refer you to page -- the third page
5 of this exhibit, People's 16, and ask if you reviewed those
6 over the lunch hour?

7 A. (Witness looks at paperwork.) Yes, I did.

8 Q. And, Doctor, on the third page of Exhibit 16, does it,
9 in fact, say that the hospital administered the morphine at
10 1345 hours?

11 A. That's what it says.

12 Q. And the records you reviewed said the urine was
13 collected 10 minutes earlier, correct?

14 A. That's what it said in the record, yes.

15 Q. All right. Thank you, sir. I'm going to leave you
16 with those exhibits in case you're asked about them.

17 I believe that's all I have, Judge, if you'll give
18 me one more second.

19 (Brief pause.)

20 MS. BACKERS: Yes, thank you. That's all I have.

21 THE COURT: Thank you.

22 Mr. Horowitz?

23 MR. HOROWITZ: Thank you, your Honor.

24 CROSS-EXAMINATION

25 MR. HOROWITZ: Q. Doctor, is it now your testimony
26 that the opiates were administered at the hospital after the
27 urine was drawn or the urine was obtained for the urine test?

28 A. Well, I don't know. That's what it said in the

1 records.

2 Q. In all the hospital records that's what it says?

3 A. Well, that's my recollection.

4 Q. And, by the way, which opiates were given to the
5 hospital to Melissa Ho, let's say, within the first 10 hours
6 she was there, if any?

7 A. My recollection is she got morphine and Dilaudid.

8 Q. How about lorazepam?

9 A. Well, that's not an opiate.

10 Q. Was she given Lorazepam?

11 A. I don't recall.

12 Q. What is Lorazepam?

13 A. Pardon me?

14 Q. What is Lorazepam?

15 A. It's a diazepine.

16 Q. Do you know what -- Mupirocin, M-u-p-i-r-o-c-i-n?

17 A. That's an antibiotic.

18 Q. Did she also give her some contrast material so they
19 could do some imaging tests?

20 A. I don't have a record of that. I don't know.

21 Q. Did you review her entire set of medical records?

22 A. I don't recall.

23 Q. Do you have the records here that you reviewed before
24 testifying in court today?

25 A. I only had the records that you gave me.

26 Q. Where are the records that you reviewed in order to
27 prepare your testimony?

28 A. I don't have them.

1 Q. Where are they?

2 A. I suppose Mr. Swisher has them. I don't know.

3 Q. How many years ago did you review the records?

4 A. It was 2015.

5 Q. So approximately one month -- how close to Christmas?

6 A. I'm sorry?

7 Q. How close to Christmas or summer? I'm not trying to
8 tie you down to a date, but how close to some major event in
9 2015 did you look at them?

10 A. Well, you have the date there. I don't know what it
11 was close to, but I'll check the date. January 10th. It was
12 nine days after my birthday.

13 Q. All right. So for a little over two years you haven't
14 looked at any records other than what I gave you today over
15 lunch?

16 A. Well, yesterday the District Attorney visited me, and
17 we looked at some records at that time, but they're not the
18 records necessarily that I looked at in 2015.

19 Q. Did you look at some paramedic records?

20 A. No, I never saw any paramedic records.

21 Q. She never showed you any ambulance records at all?

22 A. I never saw them.

23 Q. What did you see yesterday, then, when you were with
24 the District Attorney?

25 A. Well, I don't know. They were assorted records that
26 she showed me from the hospital.

27 Q. Okay. Give me a clue so I don't have to guess, please.
28 What were -- give me like anything about these assorted

1 records, anything that could help me know what they were.

2 A. Well, she showed me the lab reports.

3 Q. The one that you just looked at up on the stand?

4 A. Yes. I think I saw that yesterday.

5 Q. You think or you know?

6 A. I don't recall.

7 Q. All right. Besides that lab report, what you think but
8 you don't recall, what else did you see yesterday?

9 A. She had a stack of records about like that, and she
10 would show me some and I would look at them, and she would
11 show me some more. I don't recall what they were. I didn't
12 write it down.

13 Q. Okay. Okay, forgetting about writing it down, if it
14 was just yesterday, what do you recall what you looked at?
15 Anything?

16 A. Some medical records.

17 Q. We know that.

18 A. That's all I can tell you.

19 Q. You can tell me whose they were, right?

20 A. Yes.

21 Q. Okay. So you can tell me then just some medical
22 records. You saw Melissa Ho's medical records, right?

23 A. Yes.

24 Q. Were they only at the hospital after this accident, do
25 you know?

26 A. I didn't see anything before that, I don't believe.

27 Q. All right. Let me have a document marked as a Defense
28 exhibit. It's already been marked. Thank you. It's been

1 marked as 8. It's the same thing.

2 Doctor, let me show you 8. Is that one of the
3 records that Ms. Backers went over with you yesterday? Take
4 your time.

5 A. (Witness reviewing document.) No. I don't believe I
6 saw these yesterday, no.

7 Q. All right. Because you testified today, correct me if
8 I'm wrong, that Xanax can have certain sleepiness inducing
9 effects, but if you use Xanax over a period of months, or
10 weeks, or years, you can get used to it and not get as sleepy.
11 Is that a fair statement?

12 A. Yes, if you stayed at a prescribed dose. If you take
13 it over a period of time, you probably won't be necessarily
14 affected by the sleepiness.

15 Q. And the exhibit in your hand, if you would turn to
16 page 4 of 12. Do you see that this is a Paramedics Plus
17 record? And if you look in the upper right corner of the date
18 of service of 2/8/2012.

19 A. Yes.

20 Q. Now, if you would turn to page 7 of 12 under
21 "Narrative", and, your Honor, I'm going to ask to read some of
22 this.

23 At this point I would move Exhibit 8 in as an
24 ambulance record that has been subpoenaed by -- I forget which
25 two parties subpoenaed it, but it has been subpoenaed.

26 THE COURT: Is there any objection, Ms. Backers?

27 MS. BACKERS: I marked People's 8, your Honor. It
28 is a business record from Paramedics Plus regarding Ms. Ho.

1 If I could just take a look? I have two sets. One is on
2 Michael Andrade. I just need to make sure about this one,
3 then I have no objection. Yes, I have no objection. These
4 are the business records of Paramedics Plus on Ms. Ho. That's
5 fine. People's 8.

6 THE COURT: So People's 8 will be admitted into
7 evidence.

8 MR. HOROWITZ: And under "Narrative," and I'm going
9 to take my glasses off to read it because it's hard to read.

10 MS. BACKERS: What page, Counsel?

11 MR. HOROWITZ: Page 7 of 12. "Patient is a
12 20-year-old female with a C/C1 seizure episode lasting about
13 20 to 30 seconds. Patient found alert and oriented times 4
14 with no obvious trauma noticed. Patient denies head, neck
15 and/or back pain. Patient stated that she is recovering from
16 Xanax use. Patient said that she has been using drug for
17 about one year, and she has not used anything for about two
18 weeks. Per patient she also had one seizure episode two weeks
19 ago. Patient denies other medical problems. En route,
20 patient was calm and transported to Washington Hospital
21 without any other complications."

22 Q. Now, if that is correct, and again this is dated
23 2/8/2012, does that affect your perception as to whether or
24 not the patient would or would not react in a certain way to
25 Xanax years later?

26 A. No. It doesn't have any -- it doesn't change my
27 opinion.

28 Q. Patient does not have a memory for how Xanax affects

1 them. There aren't neural pathways that aren't changed by
2 using it. The body -- like if I get a flu shot, then when the
3 flu comes to get me, I react differently. Is taking Xanax,
4 the way this describes, change the way you react to Xanax --

5 MS. BACKERS: Objection. That's five questions.
6 Compound.

7 THE COURT: Sustained.

8 THE WITNESS: I'm not sure what the question is
9 either.

10 THE COURT: Dr. Herrmann, I sustained the question.

11 MR. HOROWITZ: Q. What I'm saying, having used
12 Xanax regularly, like she apparently did in the past according
13 to the ambulance report when they picked her up for the
14 seizures, would the fact that she used Xanax for an extended
15 period in the past affect the way that she reacted to a small
16 amount of Xanax in the present?

17 A. I think the Xanax would have the same effect on her in
18 2014 that it had in 2012.

19 Q. So there's no getting used to taking a benzodiazepine?
20 You don't get used to it?

21 A. Well, as I indicated before, people take it over a
22 period of time. They somewhat get used to it. If they stop
23 taking it and they start again, they have to start over again.
24 Or if they take other drugs with it, it's going to have an
25 additive effect. I don't think it would be any different in
26 2012 than it is in 2014.

27 Q. Let me ask you a question. You talk about drugs and
28 additive effects. Are you talking about synergistic effects?

1 A. No. I'm just talking about an additive effect.

2 Q. Now, you talked earlier -- I'm done with this for now,
3 Doctor. You talked earlier about a drug called Trazodone
4 and -- do you recall that?

5 A. Yes.

6 Q. And you initially called it a benzodiazepine, didn't
7 you?

8 A. I did, but that's wrong.

9 Q. Yeah. I said I couldn't hear, so you repeated it and
10 you then you realized your mistake, right?

11 A. Yeah. I don't know why I realized my mistake, but
12 that's what it is.

13 Q. **And then you corrected it and you said it was a what?**

14 **A. It's an antidepressant, antipsychotic.**

15 Q. What class?

16 A. It's called an endoll (phonetic), as I recall. I'm not
17 really sure.

18 Q. I thought you called it a tricyc -- something or
19 other?

20 A. Well, it's somewhat related in its effects to the
21 tricyclics, but it's not really a tricyclic.

22 Q. Earlier you said it was.

23 A. Same thing. It's somewhat related to the tricyclic at
24 least in its effect.

25 Q. Well, its effects but what class of drugs is it? Is it
26 a tricyclic? Is it a benzo or something else?

27 A. It's something else.

28 Q. Then why did you say it was a tricyclic after

1 correcting your error that it was a benzodiazepine?

2 A. I said it's related to the tricyclics, but it's not a
3 tricyclic.

4 Q. I know. Now, you said that, but --

5 MS. BACKERS: Objection, your Honor.

6 MR. HOROWITZ: -- earlier --

7 THE COURT: So let's have everybody -- we'll do
8 question and answer.

9 Mr. Horowitz.

10 MR. HOROWITZ: Q. Well, when you testified earlier
11 when you were qualified, you said straight up it's a
12 tricyclic.

13 A. No, I don't believe I did. I said it was related to
14 the tricyclics.

15 Q. No, sir.

16 THE COURT: Let's move on to a new question.

17 MR. HOROWITZ: Q. Sir, what class of drugs is it?

18 A. I don't recall. I don't know what class it gets
19 into.

20 Q. How long have you known that this was a drug you were
21 being asked about? One year, two years, one day, how long?

22 A. Sorry, what is the question again?

23 Q. How long have you known that Trazodone was an issue in
24 this case?

25 A. Well, I don't know how long I've known it.

26 Q. Sir, let's be blunt, you didn't know that Trazodone is
27 a serotonin reuptake inhibitor, did you?

28 A. No. I really didn't. I probably did, but I don't

1 recall now.

2 Q. Just like Prozac, right? Is Prozac also a serotonin
3 reuptake?

4 A. I believe it is. I'm not sure.

5 Q. Can you name me one drug that is a serotonin reuptake
6 inhibitor?

7 A. I can't offhand, no.

8 Q. Let's go to a different topic. By the way, let me ask
9 you this, if you don't know what class of drugs it is, then
10 you don't know what part of the brain it works on, do you?

11 A. I don't know what part of the brain it works on, no.

12 Q. How do you know whether it interacts with alcohol or
13 not?

14 A. Well, I know it does because it's certainly indicated
15 in literature that it does, and I know that it's a depressant
16 drug and alcohol is a depressant drug and together they're
17 both going to be depressants.

18 Q. Prozac is a depressant in your opinion?

19 A. To some extent, yes.

20 Q. And so basically anybody who is on the standard
21 Prozac-type antidepressants should not have a beer and drive;
22 is that right?

23 A. Well, there's some intolerance to the drug over a time.
24 They may be able to have a beer and drive okay. Nobody is
25 really driving okay with a beer if they get over a level of
26 .02 which with the modern beers they probably will because
27 they're -- they're much greater alcohol content than they used
28 to be. But no one is really safe even having a beer and

1 driving a car.

2 Q. Okay. So in your expert medical opinion, toxicology
3 and all the others you've qualified in, what effect do you
4 believe alcohol had on Melissa Ho when she was behind the
5 wheel?

6 A. I don't know if she had any alcohol in her system at
7 that time or not.

8 Q. Did anybody tell you whether she did?

9 A. Well, no. I don't have any -- I don't have any record
10 that she did.

11 Q. You have any record that she didn't?

12 A. I believe the laboratory report at the time it was done
13 said there was a negative for alcohol.

14 Q. In fact, there was a blood test or a urine test for
15 alcohol?

16 A. It was a urine test.

17 Q. Are you sure? Do you have that record in front of
18 you?

19 A. I have this, yes. I have that record.

20 Q. Can you show it to me, please?

21 A. Well, the record I have is one that we indicated before
22 which is a urine test.

23 THE COURT: And, Doctor, what is the number on that
24 exhibit tab, please?

25 THE WITNESS: Let me see if I can find it. It's
26 15.

27 THE COURT: Are you looking at 15 or 16?

28 THE WITNESS: 15.

1 THE COURT: Okay, thank you.

2 THE WITNESS: That's a urine test. It doesn't show
3 the alcohol.

4 MR. HOROWITZ: Q. May I grab that exhibit from you,
5 please, the one that you were looking at?

6 A. Sure.

7 Q. All right. What I'm a little confused about is that
8 the alcohol time for the alcohol result in this document, if
9 you don't mind I'll stand right over you so we can look at the
10 same time. Is that okay to stand next to you?

11 MS. BACKERS: I'm sorry, Mr. Horowitz, I can't hear
12 you.

13 MR. HOROWITZ: I wanted to stand next to him to
14 point to what I'm looking at.

15 THE COURT: Let's start with a question and then if
16 we need it.

17 MR. HOROWITZ: Okay. The alcohol on Exhibit 15 --
18 I'll move 15 into evidence since I'm going to read from it.

19 THE COURT: Ms. Backers, any objection?

20 MS. BACKERS: I haven't had a chance to look at all
21 the pages of that exhibit. I need to look. We can look at
22 that at the end of the day.

23 MR. HOROWITZ: Q. Okay. So on 15 it shows blood
24 alcohol. Alcohol blood at 8/16/14 and the time is 1335.
25 Below it it shows benzodiazepines, cocaine, opiates, PCP and
26 THC, but the time is 1738. So let's start with that.

27 MS. BACKERS: I'm sorry?

28 MR. HOROWITZ: I'm pointing out what I'm talking

1 about. There's alcohol and there's a time of 1338. Here's
2 the other substances and the different time. Do you see that?

3 MS. BACKERS: Objection. There's no question
4 pending.

5 THE COURT: Well, the first question is whether or
6 not the doctor sees that, and I assume we're moving to a
7 second question.

8 THE WITNESS: I see it.

9 THE COURT: Thank you.

10 MR. HOROWITZ: Q. How do you explain the difference
11 in times?

12 A. I can't explain the difference in times. I don't know
13 what -- whether those times or when this sample was collected
14 or the times that the sample was analyzed in the lab. I don't
15 know.

16 Q. Is one a blood test and the others are urine tests?

17 A. There's one just for alcohol and urine. There's
18 another test for various drugs in the urine.

19 Q. And, in fact, as an expert, do you figure out what type
20 of urine test was done?

21 A. What type? No. I don't know what type was used.

22 Q. Are all urine tests the same for drugs? Are all drug
23 urine tests the same?

24 A. I'm sure you combine different types of methods. I
25 don't know what method they used.

26 Q. As an expert, I'm asking you in general from your
27 knowledge, who was an expert at Western Labs, are all urine
28 tests for drugs the same? The same -- do they all use the

1 same method?

2 A. Well, we would have used the same method day by day at
3 each day. Unless something came along in the literature that
4 was better, then we might have switched.

5 Q. I'm not asking what you might have done at Western
6 Labs. I'm asking, just tell me whether or not is one urine
7 test that everybody uses, or are there different types of
8 urine tests?

9 A. I would imagine there are a number of different urine
10 test that are used.

11 Q. All right. Rather than imagine, as an expert witness
12 who knows this area, would you tell me beyond imagining do you
13 know whether or not there's more than one type of urine
14 test?

15 MS. BACKERS: Objection. Argumentative.

16 THE COURT: Overruled.

17 THE WITNESS: I'm sure there are.

18 MR. HOROWITZ: Q. What are they?

19 A. I don't know.

20 Q. Can you name just one?

21 A. No.

22 Q. Are urine tests presumptive or are urine tests
23 confirmatory?

24 A. I consider them presumptive.

25 Q. Does anybody consider them something other than
26 presumptive?

27 A. I don't know.

28 Q. Any scientists that you know of?

1 A. I don't know if they do or not. I don't.

2 Q. Have you seen any literature that says urine tests are
3 more than presumptive?

4 A. No.

5 Q. Please explain to us what the word "presumptive"
6 means?

7 A. Well, it means that the test shows something to be
8 present, and in my opinion if that's the case, then one needs
9 to go back and test the blood with a more definitive method to
10 see if it really is present. **Some of these urine drugs are**
11 **tested with a dip stick and that is not very accurate.**

12 Q. **And what are the tests that scientifically and**
13 **accurately confirm whether a substance really is present?**

14 A. **I don't do the tests anymore. I can't tell you what**
15 **the mechanics are.**

16 Q. Isn't it true for the last -- for the last 35 years, at
17 least, there have been two tests that are very well known in
18 the medical legal community that confirm the presence or
19 absence of illicit substances in the blood or urine?

20 A. I'm sure there are many more than two ways, two
21 tests.

22 Q. And what are the two ways that are commonly used?

23 A. I don't know. I don't know what they are.

24 Q. In the past haven't you testified about something
25 called gas chromatography as a confirmation test for a
26 presumptive urine test?

27 A. Gas chromatography is used. It's what we used to use,
28 yes.

1 Q. And you've testified about that?

2 A. I'm sorry?

3 Q. You've testified about gas chromatography, haven't
4 you?

5 A. I don't ever think I did.

6 Q. Did you just forget now that that existed as a method
7 of confirming?

8 A. I'm not here to talk about the mechanisms of the
9 testing. It's been many years since I've been in the lab
10 testing. So I don't profess to be an expert in the methods
11 that are used.

12 Q. And besides -- as a scientist and a doctor, besides gas
13 chromatography, **what's another method that's used? It starts**
14 **with an M.**

15 A. We used to use head space analysis to do all of our
16 urine testing. I don't know if they used it here or not.

17 Q. How about something -- mass, what's the other word?

18 A. Mass?

19 Q. Mass what?

20 A. Mass spectrometry.

21 Q. And aren't those the two methods you've known for
22 years? You've testified about them for years, right?

23 A. I don't think I ever testified that -- to the
24 mechanisms.

25 Q. You know that those are the tests that scientists use,
26 right?

27 A. We use those in our lab, yes.

28 Q. Those are the ones that are authoritative, right?

1 A. Well, they're more urine tests. There's more
2 confirmative tests that are on the market now that I'm not
3 aware of.

4 Q. As far as you're aware, those are the gold standards
5 for testing, right?

6 A. I don't know.

7 Q. So let's talk about what a urine test shows, right?
8 Let's start with marijuana, all right? Do you know much about
9 how marijuana works in the human body?

10 A. No. I don't really know a lot of the mechanisms in the
11 brain. It has to do with transmitters in the brain, but I
12 don't know what they are.

13 Q. So it's your understanding that marijuana affects
14 neurotransmitters in the brain?

15 A. Yes.

16 Q. Which neurotransmitters does it have an effect on,
17 sir?

18 A. I don't know.

19 Q. What part -- or parts of the brain does it have an
20 effect on, sir?

21 A. Well, I'm sure it acts on a number of parts of the
22 brain. One could feel euphoria if it has to do with certain
23 parts of the brain. One could feel dizziness if it has to do
24 with another part of the brain. One could feel nauseous which
25 has to do with another part of the brain. I don't know which
26 parts of the brain is affected.

27 Q. Actually marijuana is used for HIV or, God forbid, AIDS
28 patients to fight nausea?

1 A. I'm sorry, what was that?

2 Q. Isn't marijuana used for -- not to give nausea, but to
3 fight nausea for patients who are gravely, terribly ill?

4 A. Yes, it is.

5 Q. Okay. And what part of the brain does marijuana work
6 on to do that?

7 A. I don't know.

8 Q. Now, marijuana is a plant substance; is that right?

9 A. Sure.

10 Q. And within that plant substance, what are the
11 components that affect the brain of a person who ingests
12 marijuana?

13 A. I have no idea.

14 Q. Are you familiar at all with the research in Israel
15 regarding the effects of marijuana on seizures without getting
16 people at all intoxicated?

17 A. No. I haven't read Israeli literature, no.

18 Q. Are you aware that there's one American company that is
19 also doing similar research for epilepsy?

20 A. I'm sure they're doing it for many, many things, but I
21 don't keep up with that.

22 Q. Actually, sir, are you aware they're not doing it for
23 many things in the United States. Only one country is allowed
24 to research whereas in Israel there's hundreds, or you do not
25 know? You're just guessing?

26 A. I do not know.

27 Q. Sir, are you aware marijuana as a plant contains
28 hundreds of cannabinoids-related compounds some of which are

1 psychoactive and some of which are not?

2 A. I don't know. I don't know how many inactive compounds
3 there are.

4 Q. Are you aware that different marijuana plants have
5 different ratios of non-psychoactive cannabinoids versus
6 psychoactive cannabinoids?

7 A. I'm sure they do. Plants vary, but I'm not aware of
8 it.

9 Q. And when you test urine for marijuana, as we've been
10 calling it, or THC, what substance is actually being tested or
11 located?

12 A. I'm sure it's looking at all of -- all of the
13 metabolites of THC.

14 Q. How many are there? **How many metabolites?**

15 A. I don't know. There's quite a number.

16 Q. How many?

17 A. I don't know.

18 Q. Do you have an estimate?

19 A. Well, probably seven or eight. There may be more than
20 that.

21 Q. Of THC -- when you say "THC," do you mean THC Delta
22 9?

23 A. Well, that's the active one, yes.

24 Q. All right, all right. How about THC Delta 13?

25 A. Delta which?

26 Q. Delta 13?

27 A. I don't know if that's active or not.

28 Q. And what does THC Delta 9 get converted to?

1 A. Well, most of it gets converted to the Carboxy THC.

2 Q. Which is not psychoactive, right?

3 A. No, it's not.

4 Q. And, in fact, Carboxy THC blocks the action of
5 psychoactive THC, doesn't it?

6 A. I have no idea.

7 Q. So when you test the urine of somebody and get THC, you
8 have no idea whether they were taking -- let me withdraw that.
9 Isn't it true that you can buy a cannabinoid extract from the
10 marijuana plant just down the block here in Alameda at the
11 Harborside Medical Clinic? Do you know about that?

12 A. No.

13 Q. Do you know anything about medical marijuana?

14 A. No, very little.

15 Q. Are you aware that cannabinoids, until a few weeks ago
16 when the DEA reclassified them, were sold at Wal-Mart as
17 analgesics and for other non-psychoactive purposes?

18 A. Well, there's a lot of things that are being done with
19 THC and I don't follow it.

20 Q. Okay. So you don't have a clue whether the THC that
21 Melissa Ho had in her urine had any psychoactive effect on her
22 at the time of the accident, the time she consumed it or any
23 other time; is that correct?

24 MS. BACKERS: Objection. That's compound.

25 THE COURT: Sustained.

26 MR. HOROWITZ: Q. You don't have a clue whether she
27 was ever high on marijuana or whether she was taking it so her
28 legs wouldn't hurt, right?

1 A. I don't know why she was taking it.

2 Q. And you have no idea about the duration of the effect
3 of marijuana if, in fact, she smoked it in order to get high;
4 is that correct?

5 A. Well, the effect is fairly long with -- with THC.

6 Q. You think so? Even if you don't know what the
7 cannabinoid content of the plant is?

8 A. No, I don't know what it is.

9 Q. And isn't it true that if you smoke marijuana and THC
10 is converted in the body and still binds to the receptors, it
11 takes more THC to get high because the receptors are populated
12 or occupied by non-psychoactive or metabolite components that
13 don't get the person high? Isn't that true?

14 A. I have no idea.

15 Q. Let's go to a different subject.

16 Xanax, how long does Xanax actually affect a person
17 in a way that is known to them, that they know they're
18 affected? Do you know?

19 A. I think it goes up to about seven hours, or so, but it
20 varies by the person.

21 Q. When you say "up to seven hours" -- let's say I told
22 you over lunch because I was upset about something, I took
23 half a milligram of Xanax, that was like at 12:00, would I be
24 affected right now?

25 A. I don't know if you would or not.

26 Q. I might have done it. You don't know, do you?

27 A. No.

28 Q. If I did, I might be nicer?

1 A. I'm sorry?

2 Q. If I did, I might be nicer, right?

3 A. I doubt it.

4 Q. Did you ever read any scientific literature?

5 A. Sure.

6 Q. You subscribe to any scientific journals?

7 A. Well, I read the journal from the American Association
8 from Forensic Pathology and American Academy of Forensic
9 Pathology, and I read the journal, the JAMA, of course. I
10 read many journals having to do with various problems such as
11 arthritis and diseases of the elderly. And I subscribe to the
12 Journal of Laboratory Medicine.

13 Q. How about Lancet? Is Lancet a reliable scientific
14 journal that people rely upon?

15 A. Lancet?

16 Q. Lancet.

17 A. Yes, it's good. I don't read it.

18 Q. How about Nature? Is Nature a reliable scientific
19 journal that scientists reasonably rely upon?

20 A. Yes. Nature is a very commonly subscribed journal.

21 Q. Is it true or not true that Adderall in the most
22 healthy, normal people improves their abilities to focus their
23 attention?

24 A. Well, it depends on what you mean by focusing your
25 attention. It is a stimulant. It will keep people awake so
26 that they can pay attention to what they may be reading at
27 night. The problem for operating equipment or dangerous
28 materials is that it focuses one's attention or it may really

1 focus one's attention so that you're not paying attention to
2 what's going on in the general environment. Just one of the
3 problems with the stimulants when driving a car.

4 Q. Actually, isn't it true that Adderall assist people not
5 only in focusing their attention but it helps them manipulate
6 information in working memory and flexibly control their
7 responses?

8 A. I have no idea.

9 Q. All right.

10 A. It sounds like something that comes out of the
11 Internet.

12 Q. It's Nature journal, sir, on the Internet, I'll show it
13 to you in a minute, with citations. It's published.

14 A. Good.

15 MR. HOROWITZ: And I'll leave that in the hands of
16 Ms. Backers and I'll see if I have another copy. May this be
17 please be marked next?

18 THE CLERK: Defense A.

19 THE COURT: That will be Defense A for
20 identification.

21 (Whereupon Defense A was
22 marked for identification.)

23 MR. HOROWITZ: So let me show you this document that
24 I've highlighted. You see that it's commentary from the
25 journal Nature? Do you see that? That it's a commentary from
26 the journal Nature?

27 A. Yes.

28 Q. And do you see that the quote that I just read to you

1 is in there along with a footnote to the journal article at
2 the office themselves that relied upon to make those
3 statements?

4 A. You mean the improving your abilities to focus their
5 attention, manipulate information and working memories and
6 flexibly control their responses?

7 Q. Yes, sir. Do you disagree with the authors?

8 A. I don't know what that means to tell you the truth.

9 Q. Okay. I'll take that back. Thank you.

10 Doctor, thank you. I have no further questions.

11 THE COURT: Ms. Backers, do you have any Redirect?

12 MS. BACKERS: I do not. Thank you very much.

13 THE COURT: May this -- any questions from any of
14 our jurors? We have one. So let's pass it to our deputy.

15 MS. BACKERS: More than one, Judge.

16 THE COURT: More than one. And counsel if you could
17 meet me at sidebar, please.

18 MS. BACKERS: Thank you.

19 (Discussion at sidebar but not reported.)

20 MS. BACKERS: Do you have Exhibit 8, Doctor?

21 THE COURT: So, Dr. Herrmann, we have a few more
22 questions for you.

23 First, let me ask, how long does it take to build up
24 a tolerance to the combination of Trazodone, Xanax,
25 Gabapentin, alcohol and marijuana to operate a car safely?

26 THE WITNESS: Well, I can't really speak to how long
27 it would take to develop a tolerance to the drugs. You will
28 never develop tolerance to alcohol. You can get some degree

1 of tolerance, and you may know how to behave in public so you
2 don't appear intoxicated, but even very small amounts of
3 alcohol, no matter how much of it you use, and I'm talking
4 about levels of about .02 and above and .02 is about what you
5 would expect if one would drink a 12-ounce can of beer that
6 was about 5 percent or 4 percent. Beyond that, I don't care
7 how much alcohol you drink, it's going to affect your driving.

8 Marijuana has been so poorly studied that I don't
9 believe anybody knows what effects it's going to have on
10 driving a car at any given level nor how much you can get
11 tolerance to it and perhaps allay some of the problems that
12 are associated with the drowsiness that might accompany it, so
13 I can't answer that question at all.

14 The only one that has really been studied is
15 alcohol. Now, how long would it take to get tolerant to the
16 drugs that she was taking, I don't know. I would imagine, and
17 this is just an educated guess, that it's probably going to
18 take about a month or so, but I don't know the answer to
19 that.

20 THE COURT: Thank you.

21 The next question is, in your experience, would
22 paramedic or ambulance records have been transferred to the
23 hospital, more specifically information as to what medications
24 had been administered in the ambulance?

25 THE WITNESS: That -- that should absolutely,
26 definitely been done. That's the common practice in all
27 hospitals that the paramedics turn over their records or a
28 copy of their records to go into the hospital records. And if

1 that weren't done, at any time that the paramedics deliver
2 someone to the hospital, they should relate to the Emergency
3 Room people exactly what they have done and what drugs they
4 gave. So that should have been done preferably by handing
5 over their records which is the usual, but at least by telling
6 them so that it would then be entered into the records in the
7 Emergency Room.

8 THE COURT: Thank you.

9 In your medical opinion, what would be the effects
10 of cocaine usage in combination with depressants or depressant
11 drugs in the amounts that were found in defendant Melissa Ho?

12 THE WITNESS: Well, first of all, these drugs were
13 not found essentially in her. They were found in her urine.

14 But what effect would cocaine have on those depressant drugs?
15 Well, it would stimulate her to some extent counteracting some
16 of the effects, but the problem is that -- that the stimulant
17 drugs have their own problems. We were talking about focusing
18 one's attention and they do do that. They focus attention,
19 but the problem is that that's not what you want to happen
20 when you're driving a car. You don't want to be focused on
21 the taillight of the car in front of you. You want to be
22 aware of everything that's going on around you, and that's one
23 of the problems with the stimulants is that it inhibits -- it
24 doesn't inhibit, but it interferes with knowing what's going
25 on around you in the environment when you're driving a car.
26 But it would -- it would reverse to some extent the depressant
27 effects of the drugs. How much, I don't really know.

28 THE COURT: Thank you. Ms. Backers, do have any

1 additional questions?

2 MS. BACKERS: I do not, thank you.

3 THE COURT: Mr. Horowitz?

4 MR. HOROWITZ: Your Honor, if you don't mind, part
5 of this is reopening and part of it would be responsive to the
6 question, if I may.

7 THE COURT: Go ahead.

8 (Further)CROSS-EXAMINATION

9 MR. HOROWITZ: I have two documents that I'd ask be
10 marked, and I'll show them to Ms. Backers. But, first, are
11 the Emergency Room trauma notes from this visit?

12 THE COURT: So the notes are Defense B for
13 identification.

14 (Whereupon Defense Exhibit B was
15 marked for identification.)

16 MR. HOROWITZ: The second on the front page says
17 hematology.

18 THE COURT: And that next document will be marked
19 Defense C for identification.

20 (Whereupon Defense Exhibit C
21 was marked for identification.)

22 MR. HOROWITZ: I can start with this?

23 THE COURT: You may.

24 MR. HOROWITZ: Q. Doctor, on B on the last page --
25 you can look at the whole thing. I'm just directing you on
26 the last page. At 1324 there's a handwritten notation about
27 the ambulance. Do you see that?

28 A. Yes.

1 Q. I understand that that's not necessarily all that there
2 might be, but can you read what that says.

3 A. "Patient brought in by ambulance, Alameda County
4 paramedics." I guess "MVC." I'm not sure what that means.

5 Q. Could it be motor vehicle collision, perhaps?

6 A. It could be. I guess you're right. "Status, SP MVC."
7 Status problem. "Patient is restrained driver of a car that
8 hit a tow truck on the side of the road. Patient also hit
9 pedestrian on the side of the road and killed pedestrian.
10 "Patient -- I'm not. I think that's "alert" and "oriented
11 times 4. Patient also abdominal pain, right elbow pain and
12 head pain. Trauma team at the bedside."

13 Q. Does alert -- does "alert and oriented times 4" mean
14 she's super awake because she took amphetamines so she's four
15 times more awake?

16 A. No. It just means that she's alert to various things,
17 time, space, date and so forth.

18 Q. Okay. Time -- okay. Alert to time, alert to space,
19 what's the third one?

20 A. Where she is, what the date is. I don't know what they
21 asked.

22 Q. Time, space, where she is and date. So she's alert to
23 those four things?

24 A. She's alert.

25 Q. Now, they finally say at 1730 "Patient using bed pan.
26 Urine collected and sent to lab by..." and there's some name
27 comma "RN." Do you see that?

28 A. Yeah, I saw that before.

1 Q. Okay. And this is among the records I gave you over
2 lunch?

3 A. Yes.

4 Q. That I circled or put in red?

5 A. Yes.

6 Q. So is that the likely time that the urine that we're
7 looking at was collected?

8 MS. BACKERS: I'm going to object. That calls for
9 speculation.

10 THE WITNESS: Ever?

11 THE COURT: You can answer if you know, Doctor.

12 MR. HOROWITZ: Q. I'll give you both.

13 A. That does correspond with the date on that report that
14 we saw before, 1738, so unless it's some kind of a
15 coincidence, that would appear to be when that sample was
16 taken.

17 Q. And there's nothing in the ER notes about any urine
18 sample being collected before 1738; is that correct?

19 A. Well -- well, at least not on this page.

20 Q. You can turn to all the pages if you want. If you can
21 help me find it somewhere else. I couldn't, but you had it
22 over lunch. Maybe you found it better than I.

23 A. I don't think I saw anything else.

24 Q. So if the urine wasn't taken until then, she would have
25 been given both opiates and benzodiazepines at the hospital so
26 we really have no clue as to whether there were active
27 opiates, active benzodiazepines, active marijuana? We know
28 there was no alcohol or active cocaine in her system, do we?

1 MS. BACKERS: Objection. Compound.

2 THE COURT: Sustained.

3 MR. HOROWITZ: Q. Let's break it down. Based upon
4 everything that we've discussed in court, we don't have a clue
5 as to whether there was any active opiates in her system at
6 the time of the accident. True or not true?

7 A. That's true.

8 Q. And we don't have any clue whether there were any
9 active benzodiazepines in her system at the time of the
10 accident either. True or not true?

11 A. Since a urine sample was taken, the answer to all of
12 these is I don't know.

13 Q. I know, but I have to go one by one because I had an
14 objection. I'm sorry. So let me go through them. Humor me.
15 And then the same question as to cocaine. We have no idea
16 whether we just have the metabolite of cocaine showing that it
17 was used in the past -- let me start over.

18 All the urine test shows is that the metabolite, the
19 bi-product of cocaine is in her urine. It doesn't show
20 whether there's cocaine in her urine because once it's in the
21 urine, it's not cocaine anymore, right?

22 A. That's right.

23 Q. Okay. So we don't know if she had any active cocaine
24 in her blood or brain which is what we care about, right?

25 A. No. This is a urine test.

26 Q. And it shows no alcohol, correct?

27 A. That's right.

28 Q. And in terms of the Gabapentin and the Trazodone, those

1 were medications that were prescribed that she said were
2 prescribed, but we don't know when and if she took them, that
3 day or that week or at any other time?

4 A. That's right.

5 Q. I'm on a new point. Let me show you page 4 of Exhibit
6 C. I'm going to read it to you -- I'm not going to ask you to
7 give the legal part. I'm going to ask you to read --

8 MS. BACKERS: I'm going to object. Hearsay.

9 MR. HOROWITZ: Well, it's his opinion.

10 MS. BACKERS: It's nothing he wrote.

11 THE COURT: Without the reading, can you ask the
12 question?

13 MR. HOROWITZ: Yeah. There's an indication here
14 that the results should be used.

15 MS. BACKERS: Objection. Hearsay. He's reading
16 from this part.

17 THE COURT: Counsel, approach please.

18 (Discussion at sidebar but not reported.)

19 THE COURT: Mr. Horowitz, can you please ask your
20 next question?

21 MR. HOROWITZ: Q. I'm asking you as a doctor, not
22 as a lawyer or as a person in the legal system in any way, in
23 terms of what's on this medical record, it indicates that
24 confirmation by gas chromatography/mass spectrometry will be
25 sent out to a reference lab and done only at the request of a
26 physician. So basically the GC or the MS testing is something
27 that is pretty well known in the medical community; is that
28 right?

1 A. Sure.

2 Q. And, again, it's not saying it should be done only at
3 the request of a lawyer. It says at the request of a
4 physician, right?

5 A. Right.

6 Q. It's pretty well-known in the medical community that if
7 you really need to know what's in somebody's system
8 chemically, you've got to send out the test for further
9 reliable testing; is that right?

10 A. Yes.

11 Q. And --

12 A. There's no way to quantitate it.

13 Q. And earlier you said something where if somebody had
14 taken Xanax it would show up as Xanax and then you indicated
15 later it would just show up as a benzodiazepine, but you were
16 talking about blood. If you did it by blood, you could really
17 know what it was, right?

18 A. You could find Xanax if you looked at the blood, yes.

19 Q. So if we wanted to ask you as an expert witness to give
20 the opinions that these jurors were kind enough to write to
21 you, you would much prefer it to have a blood test and then
22 you could probably start giving some real authoritative
23 answers; is that correct?

24 A. Sure. I said that early on.

25 Q. I know. But my wife told me to be clear about certain
26 points and do them again. Thank you, sir. Thank you, Doctor.

27 THE COURT: Ms. Backers, any additional questions?

28 MS. BACKERS: Yes, just two.

REDIRECT EXAMINATION

1
2 MS. BACKERS: Q. Doctor, when you reviewed the
3 records for Scott Swisher in 2015, did you review any
4 statements from the defendant about all the drugs and alcohol
5 that she had taken the night before?

6 A. Yes.

7 Q. So you have some of her statements, right?

8 A. Yes, I do.

9 Q. And if you were going to charge someone with driving
10 under the influence of any of these substances, you would want
11 a **blood test, right?**

12 **A. Yes.**

13 **Q. And that's what you told Scott Swisher for charging,**
14 **right?**

15 **A. Yes.**

16 Q. And that specifically if you charged someone with
17 driving under the influence of alcohol or drugs?

18 A. Yes, any of those substances.

19 MS. BACKERS: All right. Thank you, sir.

20 THE COURT: Any additional?

21 MR. HOROWITZ: I see the time.

RE CROSS-EXAMINATION

22
23 MR. HOROWITZ: Q. So you're aware from what
24 Mr. Swisher showed you that at most she consumed at the very
25 beginning of the party she was at 1 milligram of Xanax and
26 perhaps as little as half a milligram; is that right?

27 A. What was the second paragraph?

28 Q. Ms. Backers told you what -- what had been said

1 verbally about what she consumed, so you're aware that at most
2 she consumed a milligram at the start of the party she was at
3 and perhaps only half a milligram of Xanax, correct?

4 A. Half a milligram when?

5 Q. Xanax.

6 A. Well, I don't remember what the amounts were, but I
7 remember that she consumed Xanax or took some Xanax at the
8 party.

9 Q. And what is the smallest dosage you can get of Xanax
10 when you go to the pharmacy?

11 A. I have no idea.

12 Q. Don't they vary between 1 milligram and as much as 10
13 milligrams?

14 A. I don't know.

15 Q. All right. But, I mean, to take the smallest dose or
16 half the smallest dose is a small amount if my numbers are
17 correct; is that right?

18 MS. BACKERS: Objection. Unintelligible.

19 THE WITNESS: A small amount is a small amount. I
20 don't know what they took.

21 MR. HOROWITZ: Q. All right. It varies from 1 to
22 10 and somebody took a half. That's less than the minimal --
23 minimum therapeutic dose, right?

24 A. I don't know what the therapeutic dose is.

25 MR. HOROWITZ: Thank you, Doctor.

26 THE COURT: Any additional juror questions? Seeing
27 none, may this witness be excused?

28 MS. BACKERS: Yes.

1 MR. HOROWITZ: Yes, your Honor.

2 THE COURT: Thank you very much, Dr. Herrmann. If
3 you don't mind, pass me that marked exhibit and you can step
4 down and be on your way.

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1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF ALAMEDA)

3 I, DANIELLE A. DEWARNS, do hereby certify under
4 penalty of perjury under the laws of the State of California
5 that the foregoing is true and correct:

6 That on THURSDAY, FEBRUARY 2, 2017, I reported in
7 shorthand writing the proceedings in the matter of People of
8 the State of California versus MELISSA HO, heard before the
9 Honorable TARA M. DESAUTELES, Department No. 3 of the Alameda
10 County Superior Court, Rene C. Davidson Courthouse.

11 That thereafter I caused the same to be transcribed
12 into typewriting and that the foregoing Pages 1 through 66 is
13 a full, true, and correct transcription of my notes taken at
14 the time and place therein stated.

15 Dated: February 3, 2017.

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Danielle A. DeWarns, CSR No. 9743

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