

IN THE MISSOURI COURT OF APPEALS - EASTERN DISTRICT

STATE OF MISSOURI,)
) Cause No. 47459
 Plaintiff,) (Appeal Court)
)
 vs.)
) Cause No. 482307
 JOHNNY BRISCO,) (Circuit Court)
)
 Defendant-Appellant.)

Transcript of proceedings for the Record on Appeal from
St. Louis County Circuit Court, Division Number Four

HON. B. C. DRUMM, Judge

A P P E A R A N C E S

Joseph W. Larrew, Esq.

Counsel for Plaintiff

Stormy B. White, Esq.

Counsel for Defendant-Appellant

Reported by Jo An South, CCR1 RPR

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JAMES A. ROCHE, JR.

CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

1 REDIRECT EXAMINATION

2 BY MR. LARREW:

3 Q The only question I have this is a photograph taken
4 of Johnny Brisco on November 5, 1982; is that correct?

5 A Yes.

6 MS. WHITE: Your Honor, I think he's objected she doesn't
7 know.

8 A I am just --

9 Q (By Mr. Larrew) That would be the evidence?

10 A Yes.

11 MR. LARREW: I have no other questions.

12 MS. WHITE: We have no other questions.

13 THE COURT: May this witness be excused?

14 MR. LARREW: Yes, Your Honor.

15 THE COURT: You may step down, ma'am.

16 (Witness excused.)

17 -----
18 BARBARA BEARD, having been duly sworn, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. LARREW:

22 Q Ma'am, would you please state your name and your
23 occupation.

24 A Barbara Beard. I am a Forensic Chemist.

25 Q Okay. Let me ask you this, Barb. Would you keep

1 your voice up so the jury can hear you. You say that you
2 are a Forensic Chemist?

3 A Yes.

4 Q For whom are you employed?

5 A St. Louis County Police Laboratory.

6 Q And for how long have you been so employed?

7 A Over two and a half years.

8 Q Okay. Prior to working for the County Police Depart-
9 ment what was your education?

10 A I have a Bachelor of Science degree in Biology
11 from the University of Alaska in Anchorage and I have approxi-
12 mately four years of clinical laboratory experience. I
13 have attended the F.B.I. Academy in Quantico, Virginia for
14 their course in Basic Serology and Hair Analysis.

15 Q What is the field of Serology?

16 A The study of serum, human serum of human body fluids.

17 Q Would male seminal fluid be an example in the area
18 of Serology?

19 A Yes, it would.

20 Q You also indicated --. How long did you go in
21 the F.B.I. Academy?

22 A I was there a total of one month.

23 Q Again, what was the curriculum of that particular
24 course?

25 A Two weeks was a course in Basic Serology and two

1 weeks were Basic Hair and Fiber Analysis.

2 Q Are you a member of any Associations?

3 A I am a member of the American Chemical Society
4 and American Academy of Forensic Scientists.

5 Q And have you ever testified in a courtroom?

6 A Yes, sir.

7 Q On how many occasions?

8 A On approximately thirty.

9 Q And in your testimony have you been qualified as
10 an expert?

11 A Yes, sir.

12 Q And with respect to your experience with the county
13 lab what is the nature of your work with the county lab?

14 A I analyze and evaluate physical evidence.

15 Q For what purpose?

16 A For what purpose do I analyze the evidence?

17 Q Is it in the nature of assisting criminal investiga-
18 tions?

19 A Yes.

20 Q Did you ever have occasion to become involved in
21 the investigation of an alleged rape that occurred on October
22 21st of 1982 where the alleged rape victim was a [REDACTED]
23 [REDACTED]?

24 A Yes, I did.

25 Q And how did you first become involved with that;

1 do you recall?

2 A Evidence from that case had been received into
3 the laboratory and the case was assigned to me.

4 Q Let me show you what's been marked as State's Exhibit
5 6 and ask if you can identify this particular Exhibit?

6 A Yes, I can.

7 Q What is that particular Exhibit?

8 A The towel.

9 Q And was that received at the laboratory?

10 A Yes.

11 Q In connection with the [REDACTED] rape?

12 A Yes, it was.

13 Q Okay. Was a particular number assigned to that
14 particular lab investigation?

15 A Yes, it was.

16 Q Do you know what it is?

17 A 49644.

18 Q Okay. Now, does that towel appear to be in substan-
19 tially the same condition as when you received it?

20 A Except for this hole, yes.

21 Q And do you know how the hole got there?

22 A Yes, I did the hole.

23 Q And for what purpose did you make that hole in
24 the towel?

25 A To conduct an examination for the presence of seminal

1 fluid.

2 Q And how did you conduct that particular examination?

3 A I cut a small hole from an area that had a slight
4 yellow stain. I took this small piece of cloth and put
5 it into a small test tube and added a chemical reagent.
6 After thirty minutes another chemical reagent is put in
7 and in the presence of seminal fluid a purple color is devel-
8 oped.

9 Q And what did you observe with respect to your examina-
10 tion of that particular item?

11 A I found the stain to contain seminal fluid.

12 Q And in your opinion to a degree of reasonable scien-
13 tific certainty was that a seminal stain?

14 A Yes, sir.

15 Q A male seminal stain?

16 A Yes.

17 Q And did you do any other testing with respect to
18 that particular towel?

19 A Just a visual examination.

20 Q And did you find anything or seize anything as
21 a result of that examination?

22 A No, sir.

23 Q Let me show you what's been marked for identification
24 as State's Exhibit 7. Do you recognize this particular
25 Exhibit?

1 A Yes, I do.

2 Q How are you able to recognize that particular Exhibit?

3 A It has my initials and DSN on it.

4 Q And is that particular Exhibit in the same condition
5 as when you received it?

6 A Except for the holes, yes.

7 Q How did the holes get there?

8 A I cut the holes out.

9 Q For what purpose did you do that?

10 A To test for the presence of seminal fluid.

11 Q Did you in fact conduct that test?

12 A Yes, I did.

13 Q Did you conduct the same type of test you did with
14 respect to the towel?

15 A I did.

16 Q What result or conclusion were you able to draw?

17 A I found these stains to be seminal fluid.

18 Q If the evidence were to show there were sexual
19 activity on or about that sheet would that be consistent
20 with what you found on that sheet?

21 A Yes, it would.

22 Q And did you conduct any other examination or test
23 with respect to this particular Exhibit, State's Exhibit 7?

24 A I visually examined it.

25 Q What did you do then?

1 A I removed hairs that I found adhering onto the
2 sheet.

3 Q Okay. What did you do with the hairs when you
4 found them?

5 A I put them in a container.

6 Q And what did you do with the container?

7 A Kept it with the evidence.

8 Q Okay. And at that point in time did you make any
9 examination of the hairs that you found on the sheet?

10 A No, I didn't.

11 Q Okay. Let me show you what's been marked as State's
12 Exhibit 15 and ask if you can recognize this particular
13 Exhibit?

14 A Yes, I can.

15 Q And how are you able to recognize that Exhibit?

16 A It has my number, the number that I wrote on it
17 and my initials.

18 Q Do you recognize what that Exhibit is?

19 A Yes.

20 Q And what is that?

21 A It is a county assault kit.

22 Q Okay. And what is the purpose of that particular
23 kit?

24 A It is used to gather, collect evidence samples
25 in cases of assault.

1 Q And what would that be, sexual assault?

2 A Yes.

3 Q And in connection with this particular case did
4 you receive it in that condition?

5 A The evidence tag was sealed when I received it.

6 Q And to your knowledge did somebody break that seal?

7 A Yes. I did.

8 Q When you did so did you remove anything from that
9 particular box?

10 A Yes, I did.

11 MR. LARREW: May I have these marked State's Exhibits
12 18 and 19.

13 (Whereupon, State's Exhibits 18 and 19 were marked
14 for identification.)

15 MR. LARREW: Judge, we have State's Exhibits No. 18
16 and 19, two envelopes.

17 MS. WHITE: No objection.

18 Q (By Mr. Larrew) Let me show you what's been marked
19 for identification State's Exhibit 18 and let me ask if
20 you recognize this particular Exhibit?

21 A Yes, I do.

22 Q What is that Exhibit?

23 A It is an envelope containing a vaginal swab smear.

24 Q Does it appear to relate to any particular case
25 or investigation?

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A To this case.

Q Would that be for lab number 49726?

A Yes.

Q Alleged victim, [REDACTED]?

A Yes.

Q Examine that envelope. Is there anything different about the condition when you first received it?

A My initials are on it.

Q Okay. Did you open this envelope?

A Yes, I did.

Q Was it sealed when you received it?

A Yes.

Q And does the seal indicate the fact this pertains to [REDACTED]?

A Yes, it does.

Q You broke the seal yourself?

A Yes.

Q After you did that what did you do with respect to any test or examination you made of the contents? Why don't you open it, please.

A (Whereupon, the witness complied.)

Q What are the contents of that particular envelope?

A This is a vaginal swab and this is a container that has a slide in it, microscopic slide, vaginal slide.

Q Were those things in the envelope when you received

1 it and broke the seal?

2 A Yes, they were.

3 Q And did you conduct any tests with respect to those
4 particular items?

5 A Yes, I did.

6 Q For what purpose?

7 A To determine if there was semen or seminal fluid.

8 Q And what type of examination did you make of those
9 particular items?

10 A I performed a microscopic examination on the slide
11 and a chemical examination of the swab for the presence
12 of seminal fluid.

13 Q What conclusion, if any, did you draw from your
14 test?

15 A I determined the swab to contain seminal fluid.

16 Q And what is seminal fluid?

17 A It is a liquid part of semen.

18 Q And what is the source?

19 A It is the male ejaculate.

20 Q And with respect to State's Exhibit 19 can you
21 identify what this particular envelope is?

22 A It is a rectal swab and smear.

23 Q Okay. And is there any difference in the condition
24 that it is in now as opposed to when you received it?

25 A Yes.

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Q What is that?

A It's been opened and it has my initials on it.

Q Was it sealed when you received it?

A Yes, it was.

Q Does that particular envelope pertain to the [REDACTED] case also?

A Yes, it does.

Q What did you do when you opened that particular envelope?

A I examined it similar to the vaginal slide and swabs.

Q And what conclusions, if any, did you draw from your test of that particular item?

A I found the presence of seminal fluid on the rectal swab.

Q This is on the rectal swab. What area is the rectal swab taken from?

A From the rectum.

Q Of the victim?

A Yes.

MS. WHITE: We would object to this witness testifying to something she doesn't have knowledge of and ask that the answer be stricken. She doesn't have direct knowledge of --

THE COURT: I am going to sustain the objection on

1 that portion of the answer that pertains to the victim but
2 in all other respects the objection will be overruled.

3 MR. LARREW: Judge, just for clarification of the record
4 may we approach the bench?

5 THE COURT: I think you have established chain of custody.

6 MR. LARREW: That is why I am concerned.

7 MS. WHITE: No, we are not --

8 MR. LARREW: You are not contesting that, okay.

9 Q (By Mr. Larrew) Did you do any other work in connec-
10 tion with the investigation of this case?

11 A Yes, I did.

12 Q And what was the nature of that investigation?

13 A I conducted a hair examination.

14 Q Let me show you what's been marked as State's Exhibit
15 16 and ask if you can recognize this particular Exhibit?

16 A Yes, I can.

17 Q What is that particular Exhibit?

18 A It is an envelope that was received into the lab
19 containing hair samples.

20 Q Okay. And did you open that envelope?

21 A Yes, I did.

22 Q And does your initials appear on the back of that
23 particular envelope?

24 A Yes, they do.

25 Q Let me show you what's been marked as State's Exhibit

1 No. 17 and ask if you can identify this particular Exhibit?

2 A Yes, I can.

3 Q And what is that Exhibit?

4 A It is an envelope that contained head hair samples.

5 Q Okay. And who does that envelope pertain to?

6 A Johnny Brisco.

7 Q Okay. And did you do anything with respect to
8 the content of this envelope?

9 A Yes, I did.

10 Q What was that?

11 A I removed the hairs from the envelope and mounted
12 them onto a microscope slide. I then examined them further,
13 compared these hairs to the hairs that I found on the sheet.

14 Q Did you make a comparison of that particular sample
15 of hair obtained in this envelope with anything else?

16 A I am sorry. What?

17 Q Did you make a comparison of the contents of this
18 envelope you said you mounted on slides. Did you make compar-
19 ison of those contents and slides with anything else?

20 A Yes, I did.

21 Q What did you make a comparison with?

22 A I compared them to a hair found on the sheet.

23 Q Found on what sheet?

24 A That sheet.

25 Q Are you referring to State's Exhibit 7?

1 A Yes.

2 Q Okay. And you testified previously that you packaged
3 a hair in connection with that?

4 A Yes.

5 Q At some point in time after you had head hair from
6 the suspect did you go back and examine the hairs that you
7 found on the bed sheet, State's Exhibit 7?

8 A Yes, I did.

9 Q Could you make any determination with respect to
10 the origin of those head hairs?

11 A Well, I found several hairs. Most of them were
12 Caucasian. However, one was Negroid.

13 Q Did you only find one Negroid hair?

14 A Yes, I did.

15 Q Are you able to say to a degree of scientific cer-
16 tainty whether or not the hair is of certain race?

17 A Yes, you can.

18 Q It was your determination all the hairs except
19 for one was a Negroid hair?

20 A Yes.

21 Q Did you mount that on a slide?

22 A I mounted all the hairs I found on a sheet onto
23 a slide.

24 MR. LARREW: May I have this marked State's Exhibit
25 20?

1 (Whereupon, State's Exhibit No. 20 was marked for identi-
2 fication.)

3 Q (By Mr. Larrew) Let me show you what's been marked
4 for identification as State's Exhibit 20 and ask if you
5 can identify this particular Exhibit?

6 A Yes, I can.

7 Q And what is that particular Exhibit?

8 A It is a microscope slide of hairs that I found
9 on the sheets.

10 Q And who prepared that slide?

11 A I did.

12 Q And does it appear to be in substantially the same
13 condition as when you prepared it?

14 A Yes.

15 Q You say you made a microscopic examination of this
16 particular slide?

17 A Yes, I did.

18 Q What conclusions or what observations did you make
19 with respect to the slide alone?

20 A On left side I found Caucasian head and pubic hairs
21 that matched those head and pubic hairs of the victim.
22 I also found one Negroid head hair which on comparison I
23 found to match the known head hairs from John Brisco.

24 (Whereupon, State's Exhibit 21 was marked for identi-
25 fication.)

1 Q (By Mr. Larrew) Let me show you what's been marked
2 for identification as State's Exhibit 21. Do you recognize
3 this particular Exhibit?

4 A Yes, I do.

5 Q And what is that Exhibit?

6 A It is a microscope slide of hairs removed from
7 this envelope.

8 Q You are referring to State's Exhibit 17, the known
9 head hair sample of Johnny Brisco?

10 A Yes.

11 Q Who made that slide?

12 A I made the slide.

13 Q And does it appear to be in substantially the same
14 condition as when you prepared it?

15 A Yes.

16 Q And is that the particular Exhibit you made a compar-
17 ison with in connection with State's Exhibit 20?

18 A Yes, it is.

19 Q And did you do anything with respect to marking
20 the comparison you made or did you make any marks on those
21 particular slides?

22 A I marked the foreign hair.

23 Q On what slide are you referring to? State's Exhibit
24 20, is that right?

25 A Yes.

1 Q That is the hair found on the bed sheet in [REDACTED]
2 [REDACTED]'s bedroom?

3 A Yes.

4 Q You marked that for what purpose?

5 A So that it would be obvious.

6 Q And that is what hair that you have circled there?

7 A That is the Negroid head hair matching the known
8 head hair?

9 Q Now with respect to your conclusion you have just
10 reached what conclusions is a scientist or an expert able
11 to reach with respect to the comparison of any two hairs?

12 A There is two conclusions that can be reached in
13 a hair example. The first is that the hairs are not similar
14 and could not have come from the same source. The second
15 is that the hair exhibits some similarities but also unac-
16 countable differences and therefore you can reach no conclu-
17 sions. It is inconclusive. The third conclusion is that
18 the hair exhibits similar microscopic characteristics and
19 could have come from the same source.

20 Q What determination did you make when you made the
21 comparison of the Negroid head hair from State's Exhibit
22 7 with the known head hairs of the Defendant? State's Exhibit
23 17.

24 A I found that they both exhibit similar microscopic
25 characteristics.

1 Q What does that mean to you?

2 A Therefore, they could have come from the same source.

3 Q And you can say with certainty it is a Negro hair;
4 is that correct?

5 MS. WHITE: Your Honor, I object to the form of the
6 question.

7 MR. LARREW: I will withdraw the question. It was
8 leading.

9 Q (By Mr. Larrew) With what degree of certainty
10 can you make a determination as to the race of hair?

11 A Race and body hair are certain determinations.

12 Q Okay. But with respect to the source, the person
13 that it comes from, you cannot say absolutely who it comes
14 from; is that correct?

15 A No.

16 Q But in your opinion the hair sample that was found
17 on that sheet could have come from the head hair of the
18 Defendant's hair?

19 A Yes, it could have.

20 MR. LARREW: I have no other questions of the witness.

21 THE COURT: Just a moment. Can you approach the bench,
22 please.

23 (Whereupon, counsel approached the bench and conference
24 was had out of hearing of the reporter and jury.)

25 THE COURT: Ladies and Gentlemen, at this time I am

1 going to declare a brief recess. Once again let me give
2 you an admonition that I have previously given you.

3 (Whereupon, the Court read to the jury MAI CR 108B.

4 (Whereupon, there was a brief recess after which the
5 following occurred:)

6 CROSS-EXAMINATION

7 BY MS. WHITE:

8 Q Mrs. Beard, when you said this head hair matched
9 the hair of Johnny Brisco, what you mean is that it could
10 have come from Johnny Brisco; is that correct?

11 A Yes.

12 Q It could also have come from a hundred other males;
13 is that correct?

14 A Only if their hairs had similar microscopic charac-
15 teristics as those of his.

16 Q It could have come from a hundred other black males;
17 is that correct; maybe a thousand?

18 A I have no idea.

19 Q It could have come from a black male who was five
20 eight, a hundred and thirty?

21 A Certainly.

22 Q Okay. And you can't say with any certainty that
23 that is Johnny Brisco's hair?

24 A All I can say is that it could have come from his.

25 Q Could have come from a black male of his similar

1 characteristics?

2 A Could have come from the known sample that I examined
3 which was his hair.

4 Q Now, the seminal fluids. You can get a blood type
5 from that; is that correct?

6 A In some cases, yes.

7 Q Why didn't you get a blood type?

8 A To determine blood type from a seminal stain you
9 have to first determine the secreter's status. Secreter
10 status or typing of seminal fluid isn't done in our laboratory.

11 Q But it is done in some F.B.I. labs; is it not?

12 A Yes, it is.

13 Q And from that you could get a blood type; correct?

14 A If the person is a secreter and if there is enough
15 quantity of seminal fluid it is possible, yes.

16 Q Well, about eighty percent of the male population
17 are secreters; is that not correct?

18 A I believe it is seventy-five to eighty, yes.

19 Q Therefore, with a blood type if the blood type
20 of -- once a blood type is obtained the person who left
21 that seminal stain is of that blood type; correct?

22 A I am sorry. What was the question?

23 Q Once a blood type is obtained, a blood type A,
24 B or O can be obtained from the seminal fluid?

25 A Yes, if they're a secreter.

1 Q And then you could take the blood type of a known
2 suspect, see if it matched, if he were also secreter; is
3 that correct?

4 A You could determine if he was a secreter and what
5 his blood type was, yes.

6 Q So if the blood type is different it could not
7 have been -- if the blood type does not match it could not
8 be the same person; correct?

9 A It could depend; I can't say. It would depend
10 on so many things. If there is a victim who was also a
11 secreter it could be a mix of two; I can't really say.

12 Q Is seminal fluid found in females?

13 A No, but saliva, sweat, just vaginal mucous is also;
14 if the victim is a secreter her ABL substance would be there
15 present also, so there could be a --

16 Q In this case was it determined whether or not Rebecca
17 Thomason was a secreter or what her blood type was?

18 A To determine whether someone is a secreter you
19 need a liquid blood sample. We had no liquid blood samples.

20 Q It was not done in this case?

21 A No.

22 Q But it is being done in F.B.I. labs?

23 A Yes.

24 Q But it was not done in this case?

25 A No, there wasn't --

1 Q In this case there was no attempt made to find
2 out the blood type from the seminal evidence that you had;
3 is that correct?

4 A Yes.

5 Q Okay. Is there any way to tell --. There is no
6 way to tell how old the seminal stains are that are the
7 samples you got; is there?

8 A No, there isn't.

9 Q So they could be hours old or could be weeks old;
10 is that correct?

11 A Yes.

12 Q Now in criminal cases you only testify for the
13 State; is that correct?

14 A Yes, it is.

15 MS. WHITE: I have no further questions.

16 REDIRECT EXAMINATION

17 BY MR. LARREW:

18 Q Miss Beard, you testified that you have only testi-
19 fied for the State. Have you ever been called as a defense
20 witness?

21 A I have been subpoenaed by the defense but I didn't
22 testify.

23 Q And you are not testifying as to your opinions
24 or conclusions today because you are paid by the State or
25 work for the Court; are you?

1 MS. WHITE: Your Honor, I object. Irrelevant.

2 MR. LARREW: On Cross-Examination --

3 THE COURT: Overruled.

4 A I am testifying to the results that I found in
5 my examination.

6 Q (By Mr. Larrew) Not because --

7 A Not the opinion of whom I work for.

8 Q In order for you to make a comparison to determine
9 the blood type you would also have to have a known blood
10 type from the Defendant; wouldn't you?

11 A Yes, I would.

12 Q And did you ever get a blood type from the Defendant?

13 A No, sir.

14 Q Are you able to just go over and get a blood type?

15 A No.

16 Q Or blood sample?

17 A No.

18 Q And with respect to the tests that are done at
19 the lab regarding trying to determine if a person is a
20 secreter is that ever done?

21 A No, it isn't.

22 Q Is that because the lab is just not set up for
23 those kind of tests?

24 A No, it isn't.

25 Q Is that why it has to be sent over to the F.B.I.?

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A Yes.

MR. LARREW: I have no other questions of the witness.

RE-CROSS-EXAMINATION

BY MS. WHITE:

Q Mrs. Beard, it can be done. These tests are done in the F.B.I. lab; that is correct; is it not?

A Yes, they are.

Q And you went through F.B.I. training; is that correct?

A Yes, I did.

Q And the F.B.I. does work with local police departments; do they not?

A They will examine evidence for them.

Q Okay. But in this case it was not requested?

A Not to my knowledge.

Q And as far as not having any blood type from Johnny Brisco you never requested one; did you?

A I don't know. I didn't personally, no.

MS. WHITE: I have no further questions.

MR. LARREW: Judge, I have no other questions of this witness.

THE COURT: May this witness be excused?

MS. WHITE: Yes, Your Honor.

THE COURT: You may step down, ma'am.

(Witness excused.)

1 **MR. LARREW:** Judge, at this time the State would move
2 for admission of all Exhibits I have not previously for.

3 **MS. WHITE:** We have no objection subject to our objection
4 previously touched on, Your Honor.

5 **THE COURT:** All right. State's No. 13 will be offered
6 and received. No. 16 will be offered and received. 17
7 will be offered and received. 18 will be received. 19
8 will be received. 20 will be received. 21 will be received.

9 The objections to the introduction of those Exhibits
10 will be overruled.

11 Are there any we haven't addressed ourselves to?

12 **MR. LARREW:** Judge, I think we have covered them all
13 but it is my understanding --

14 **THE COURT:** Well, we have admitted, offered and received
15 State's Exhibits 1 through 21 including 11A.

16 **MR. LARREW:** Yes, Your Honor.

17 **THE COURT:** Very well. Anything further, Mr. Larrew?

18 (Whereupon, counsel and Court had a conference out
19 of hearing of the reporter and the jury after which the
20 following occurred:)

21 **THE COURT:** It is my understanding, Mr. Larrew, that
22 you have made a motion to permit the jury to examine the
23 evidence?

24 **MR. LARREW:** Yes, Your Honor.

25 **THE COURT:** That has been objected to and that objection