

IN THE COURT OF COMMON PLEAS
OF THE COUNTY OF CHESTER, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
:
-vs- : No. 2925-90
:
DALE LESLIE BRISON, :
:
Defendant. :

Courtroom No. 6
Chester County Courthouse
West Chester, Pennsylvania
June 4, 1991
9:30 a.m.

BEFORE:

THE HONORABLE CHARLES B. SMITH, Judge and a
Jury.

APPEARANCES:

ALITA ROVITA, Esquire,
Assistant District Attorney,
on behalf of the Commonwealth;

VINCENT P. DiFABIO, Esquire,
on behalf of the defendant.

Santina M. Cardana
Official Court Reporter

I N D E X

<u>COMMONWEALTH WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDR.</u>	<u>RECR.</u>
Debra Fertal	135	147	156	--
Larry E. Dampman	158	165	--	--
Albert Weaver	172	174	177	177
Phyliss Tester	178	183	191	--
 <u>DEFENDANT'S WITNESSES</u>				
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Jeffrey Gordon	205	207	--	--
Brenda Brison	212	213	--	--
Dorothy Cureton	214	216	--	--
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 <u>COMMONWEALTH REBUTTAL</u>				
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I N D E X

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P R O C E E D I N G S

(Whereupon the following proceedings were held in open court in the presence and hearing of the jury:)

MS. ROVITO: Could you mark these, please.

(Report was marked as Commonwealth's Exhibit C-23 for identification.)

(Chart was marked as Commonwealth's Exhibit C-24 for identification.)

(Slides were marked as Commonwealth's Exhibits C-25 through C-27, respectively, for identification.)

THE COURT: Okay. Good morning, ladies and gentlemen. Your first witness.

MS. ROVITO: Commonwealth calls Debra Fertal.

DEBRA FERTAL,
after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ROVITO:

Q State your name and occupation for the record, please, and will you spell your last name for the reporter.

1 A Debra Fertal, F-E-R-T-A-L.

2 Q And, Miss Fertal, how are you employed?

3 A I'm a forensic scientist for the
4 Pennsylvania State Police.

5 MS. ROVITO: And, Your Honor, for the
6 record, Mr. DiFabio and I have agreed that Miss
7 Fertal is an expert in the field of hair
8 comparison and serology, blood work.

9 MR. DiFABIO: That is correct, Your Honor.

10 THE COURT: Thank you.

11 BY MS. ROVITO:

12 Q Miss Fertal, did you have an opportunity to
13 examine some evidence brought to you in reference to a
14 rape case involving [REDACTED]?

15 A Yes, I did.

16 Q Do you know when the evidence was brought
17 into your lab?

18 A I believe it was brought in July 23rd, 1990.

19 Q If I may show you what's marked Commonwealth
20 Exhibit C-23. Will you tell me what that is and tell me
21 if you recognize it.

22 A Yes. This is the report that I had
23 submitted from the results that I found from analyzing
24 the evidence.

1 Q And what you received on July 23rd -- can
2 you tell me what items you received on July 23rd.

3 A I received a Surchie rape kit and a brown
4 paper bag containing white underpants.

5 Q This is C-14. Can you take a look at that
6 for me, please. You want to tell me what you have inside
7 that Surchie rape kit.

8 A Okay. This is the rape kit and it contains
9 the steps that were completed at the hospital, the
10 examination. It includes a debris collection, genital
11 swabbing, dried secretions, hair combings and pubic
12 combings, pubic hair, head hair, fingernail scrapings,
13 saliva sample, nasal mucous sample, whole blood sample
14 and slides.

15 Q And this evidence would have all come from
16 [REDACTED], all those samples?

17 A Correct.

18 Q Do you know who generally performs the rape
19 kits?

20 A The M.D. listed on here is Cinco.

21 Q And you said you got a pair of panties, as
22 well, in a brown paper bag. This is marked Commonwealth
23 15. Do you recognize these?

24 A Yes.

1 Q And you recognize them as the panties you
2 received in the evidence with the rape kit?

3 A Yes.

4 Q Now, Miss Fertal, can you tell me what, if
5 any, tests you ran on the evidence that you got from the
6 rape kit first?

7 A Yes. I tested some of the items for seminal
8 fluid.

9 Q Can you tell me, did you find any seminal
10 fluid?

11 A Yes, I did. I found seminal fluid on the
12 debris collection, the genital swabbing, the dried
13 secretions, the vaginal, anal and oral swabs and also on
14 the underpants.

15 Q Did you find anything else on the
16 underpants?

17 A Yes, I did. I found human blood type O.

18 Q And did you have an opportunity to test
19 [REDACTED] blood?

20 A Yes, I did.

21 Q And what type is she?

22 A She's also type O.

23 Q What was it that you found on all those
24 items you just listed?

1 A Seminal fluid.

2 Q Made up in seminal fluid is spermatozoa and
3 acid phosphatase?

4 A Correct.

5 Q What is acid phosphatase?

6 A Acid phosphatase is a compound found in
7 seminal fluid. We use it to do a quick color test. It's
8 a test that we can add a little reagent to. If it turns
9 to bright purple, we know it's positive. We presume it
10 is possibly a seminal stain. We go on to confirm that by
11 looking for P 30 or spermatozoa, which is another
12 compound found in seminal fluid.

13 Q When did you start to work on the rape kit?

14 A I believe I began October 15th, 1990.

15 Q Approximately three months after the
16 evidence came into the lab?

17 A Correct.

18 Q Now, other than blood and seminal fluid on
19 this pair of panties, did you find anything else?

20 A Yes. I found one human head hair.

21 Q Miss Fertal, when you went over the other
22 remaining items of the rape kit, did you find anything
23 else of interest?

24 A Yes. I found human blood in the fingernail

1 scrapings.

2 Q Did you have an opportunity to test a vial
3 of the defendant's blood?

4 A Yes, I did.

5 Q And what type of blood is he?

6 A He's type B.

7 Q Can you tell me, Miss Fertal, what it means
8 to be a secreter.

9 A Yes. 80 percent of the population are
10 called secreters. What this means, we are able to find
11 their blood type, not only from their blood, but also
12 from the body's fluids such as saliva, vaginal fluid and
13 semen.

14 Q Do all secreters secrete in the same
15 proportions?

16 A No. You have stronger secreters and weaker
17 secreters.

18 Q And did you attempt to do a blood grouping
19 test on the fluids that were found in the rape kit?

20 A Yes. And all the seminal fluid stains. I
21 did attempt to find the blood type.

22 Q Is Dale Brison a secreter?

23 A Yes, he is.

24 Q Is [REDACTED] a secreter?

1 A Yes, she is.

2 Q Miss Fertal, you were unable, though, to get
3 a blood typing from the seminal fluids?

4 A That's correct. Our tests were
5 inconclusive.

6 Q Can you tell me what kind of factors can
7 affect the sample that you are testing for the blood
8 grouping?

9 A Yes. There's a number of factors that can
10 decide whether we can find the type or not. First, the
11 time from when it was actually put on the material to the
12 time it's tested, environmental factors such as the
13 temperature, humidity, how much light it was exposed to,
14 the fact whether the person was a stronger or weaker
15 secreter, and also bacteria attacks it.

16 Q The fact that there were three months from
17 the time the evidence was collected to the time you had
18 an opportunity to view it could have caused it to break
19 down?

20 A Yes.

21 Q And can you tell me, in your experience, do
22 you have a percentage on how much you actually can type
23 from seminal fluid or saliva?

24 A Just a rough estimate. Out of the number of

1 times that we try to get a blood type from any kind of
2 body fluid, I would say ten percent of the time we're
3 actually able to get a blood type.

4 Q It's more often than not unsuccessful?

5 A Correct.

6 Q Now, let's get back to the head hair that
7 you found in [REDACTED] underwear. Did you have an
8 opportunity to compare that head hair to any of Betty
9 Kramer's head hair?

10 A I compared it to both head hair and pubic
11 hair.

12 Q Miss Fertal, I'd like you to come down, and
13 I'm going to show you a poster that's marked Commonwealth
14 Exhibit 24. It's actually something you brought with you
15 yourself this morning. Do you recognize that document?

16 A Yes. It's a document that I prepared for
17 court presentations.

18 Q And can you tell me what that document
19 represents?

20 A What this is is a picture of a human hair
21 and what it's made up of. A human hair is very similar
22 to the cross section of a pencil. When you look at the
23 pencil, it has a lead which is very similar to the
24 medulla of a hair.

1 This medulla can be continuous or broken or
2 fragmented. The wood of a pencil is similar to the
3 cortex on a hair that contains the pigment which actually
4 gives hair its color. This can be different shades,
5 different patterns. We look for characteristics there.

6 The yellow paint on the pencil is very
7 similar to the cutical of a head hair. The cutical is
8 clear, but it's a protective coating made up of scales
9 that protect your hair.

10 Just like a pencil has a tip, so does your
11 hair. It can either be worn from use or nice and round.
12 It can be a sharp cut or it can be damaged. The root of
13 a hair is very similar to the eraser. And there also we
14 look for characteristics.

15 Q What was it that you did, Miss Fertal, when
16 you compared the hair that was found in the underwear to
17 [REDACTED] head hair?

18 A What I did, I took these hairs and I look at
19 them under a microscope. We have what we call a
20 comparison microscope, where we are able to look at both
21 hairs at the same time, side by side.

22 Q And were you able to draw any conclusions
23 from the matching of [REDACTED] head hair to that
24 hair you found in the underwear?

1 A Yes. The hair I found in the underwear was
2 inconsistent with the characteristics that I found in
3 [REDACTED] standard head hair.

4 Q And the hair you found in the underwear, you
5 were able to tell was a head hair?

6 A Yes.

7 Q No comparison was necessary to the pubic
8 hair of [REDACTED]?

9 A Correct.

10 Q Did you then receive a sample of head hair
11 from the defendant, Dale Brison?

12 A Yes, I did.

13 Q And did you have an opportunity to compare
14 the head hair of Dale Brison to the hair you found in the
15 underwear?

16 A Yes, I did.

17 Q Can you tell us what the results of your
18 comparison were from the hair of Dale Brison and the hair
19 found in the underwear?

20 A Yes. The hair I found in the underwear
21 exhibited characteristics that were similar to the
22 characteristics in Dale Brison's standard head hair.

23 Q Can you tell me -- you've used this chart
24 and you've used a couple things, root, medulla, cortex.

1 Were those things the things that were similar in Dale
2 Brison's hair to the hair in the underwear?

3 A Yes. His medulla was similar, the pigment
4 pattern, the color. The cortex was similar, cutical,
5 tip. All those characteristics, as far as the shape and
6 color of the hair, were consistent.

7 Q Did you notice any other characteristics of
8 Dale Brison's hair that were consistent with the hair
9 found in the underwear?

10 A As far as shape, yes, the general shape was
11 similar.

12 Q And you don't do any hair classifications in
13 regard to race, do you?

14 A No, we do not.

15 MS. ROVITO: If I could have a moment, Your
16 Honor.

17 BY MS. ROVITO:

18 Q Miss Fertal, did you have a conversation
19 with Detective Gordon about DNA?

20 A Yes, I did.

21 Q Can you tell me what you remember about that
22 conversation.

23 A We were talking about the one hair I did
24 find in the underwear. And following that he asked me if

1 DNA was possible. On the head hair, if it is pulled out
2 while it is still growing in its living stage, you can
3 have living tissue. If the living tissue is present,
4 then DNA is possible. This hair did not have any living
5 tissue, so DNA was not possible. And I told Officer
6 Gordon that.

7 Q When you told Detective Gordon that DNA
8 wasn't possible, you were relating specifically to the
9 hair, correct?

10 A Yes.

11 Q But you're not quite -- strike that. You
12 thought he was talking about the hair, as well?

13 A Yes, I did.

14 Q You and Detective Gordon didn't have any
15 specific conversation as to whether or not there was
16 enough seminal fluid or left over evidence from the rape
17 kit to test, did you?

18 A No.

19 Q And you just recently found out that when
20 Detective Gordon asked you about DNA, he was talking
21 about everything?

22 A Right. There was a little misunderstanding
23 in communication there.

24 MS. ROVITO: Okay. I have no further

1 questions.

2 MR, DiFABIO: Just one second, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DiFABIO:

5 Q Miss Fertal, you testified that you didn't
6 conduct your examination on these various items until
7 sometime in October; is that correct?

8 A Yes, that's correct.

9 Q And what was that date again?

10 A I began my examination October 15th.

11 Q When did the crime lab actually receive this
12 evidence?

13 A July 23rd, 1990.

14 Q So they received the evidence less than ten
15 days after the actual rape; is that correct, the rape
16 occurred July 14th?

17 A Okay. Yes.

18 Q And you mentioned to us and you testified
19 that because of the time factor here there could be a
20 breakdown in some of the items which could affect the
21 testing; is that correct?

22 A Yes.

23 Q Would the ten day period have been
24 sufficient enough time to cause a breakdown in the items

1 for testing purposes?

2 A There's no way to give a definite answer
3 because of the other factors that do affect it.

4 Q But in any event, the detectives had this
5 evidence in your lab within ten days and no testing was
6 done until October?

7 A That's correct.

8 Q And you can't give us an answer, if that
9 delay from July 14th, when they had the items, until
10 October 15th when they were tested, could cause the
11 breakdown in the items, can you?

12 A That time could be one of the factors.

13 Q You first started discussing the blood
14 examination that was done here. And I believe you told
15 us you did some comparison of the blood from Dale Brison
16 with the other blood that was found in the items; is that
17 correct?

18 A Yes.

19 Q And initially you started discussing about
20 secreters, and you mentioned that 80 percent of
21 individuals are secreters?

22 A Yes.

23 Q And the fact that Dale Brison or [REDACTED]
24 [REDACTED] is a secreter is of little significance because 80

1 percent are secreters?

2 A It's significant that we're able to get
3 their blood type, only to that extent, yes.

4 Q But you are able to do that with 80 percent
5 of the population, are you not?

6 A You should be able to.

7 Q Therefore, that's quite a large number of
8 people, 80 percent of the population that are secreters,
9 that you can get a blood type?

10 A Correct.

11 THE COURT: What percentage of the
12 population are type B?

13 THE WITNESS: Roughly ten percent.

14 THE COURT: Ten percent of the population?

15 THE WITNESS: Roughly.

16 BY MR. DiFABIO:

17 Q That was ten percent are type B?

18 A That's real rough. It's not an exact
19 number.

20 Q And that was, I believe you said, the
21 defendant's blood type?

22 A Yes.

23 Q And what was [REDACTED] blood type?

24 A Type O.

1 Q And what percentage is type O?

2 A Roughly 40 percent.

3 Q You attempted to do and did do a comparison
4 between the blood that was found; is that correct?

5 A Yes.

6 Q And I believe, again, getting this to a
7 bottom line, your results were inconclusive; is that
8 correct?

9 A Could you restate that.

10 Q At least your report indicates that all
11 blood grouping tests were inconclusive?

12 A On the seminal stains, yes.

13 Q And what did you mean by that?

14 A I did test the seminal stains to try to find
15 a blood type. And all my results were inconclusive. I
16 was unable to find one.

17 Q And by inconclusive, then you were not able
18 to link Dale Brison's type; is that correct?

19 A That's correct.

20 Q Now, you also told us that only ten percent
21 of these type of tests are successful?

22 A That's a rough estimation.

23 Q So 90 percent of the time this blood
24 grouping test, or about 90 percent, has no success, you

1 don't come out with any conclusive results?

2 A Correct.

3 Q Could you tell me why that is?

4 A Because of the number of factors that do
5 attack the substances that we're looking for.

6 Q You also testified concerning a request to
7 do some DNA testing. Are you familiar with DNA testing?

8 A Not myself personally, but I know about it.

9 Q What can you tell us about it? What is it?

10 A DNA testing, what it does, it takes a stain,
11 seminal, vaginal or blood, and you're able to profile it
12 as far as the person. So you can identify the gene
13 that's found in the DNA to that person.

14 Q So basically what you're looking for is a
15 match in some genetic code between a sample, let's say
16 from the defendant, and the sample you would have at the
17 lab; is that correct?

18 A Yes.

19 Q And matching up that genetic code, would you
20 agree with me, gives some determination as a match
21 between the genetic code from the one sample to the
22 other?

23 A Yes.

24 Q And, therefore, taking that match in genetic

1 codes, you can determine if that sample from the
2 defendant matches the sample you have from the victim; is
3 that correct?

4 A Yes.

5 Q And in using that DNA testing, would you
6 agree with me, that studies have shown that the genetic
7 code that someone has is generally unique to that person?

8 A Yes.

9 Q So, therefore, it's almost like you're
10 matching genetic fingerprints from that person with the
11 sample you have; is that correct?

12 A Yes.

13 Q Would you agree with me then that it is more
14 akin as a fingerprint that is unique to a person, that
15 is, the DNA is more unique to a person, more similar to
16 that than as to the other type of testing?

17 A No.

18 Q Blood testing, for instance, you told us
19 that 40 percent have type O; is that correct?

20 A Yes.

21 Q Ten percent have type B; is that correct?

22 A Approximately.

23 Q With a DNA aren't you focusing on a
24 fingerprint type thing, an exact genetic match between

1 that person and a sample found?

2 A Correct.

3 Q And when you have that genetic match, you
4 are not then reducing it to percentages of population,
5 but you are matching it more to that person, as opposed
6 to 40 percent of the population, are you not?

7 A Yes. It's much more exact.

8 Q You also told us about the hair sample
9 comparison that was done. And I believe you told us that
10 you were looking at and examining a head hair found in
11 the underpants and matching that up with a head hair
12 sample from Dale Brison; is that correct?

13 A Yes.

14 Q And you told us that there were various
15 characteristics of the hair that were similar. Could you
16 detail which characteristics were similar?

17 A Medulla, pigment color, pigment pattern were
18 very similar. The general shape of the hair was similar.
19 The hair I found in the underwear had a tapered tip.
20 Some of his head standard hair had tapered tips.

21 Q When you say similar, you are not able to
22 make an exact match of hair?

23 A No. It's subjective.

24 Q What do you mean by subjective?

1 A You're looking at something side by side and
2 you are visually deciding whether it looks similar to
3 you.

4 Q Certainly a hair comparison is no where near
5 exact as a fingerprint comparison, is it?

6 A No.

7 Q And a hair comparison, you're looking for
8 some similar characteristics of one person's hair to
9 another?

10 A Correct.

11 Q Other than looking at it visually, there's
12 no other scientific examination that you do to compare
13 the hair, is there?

14 A No.

15 Q And would you agree with me that certainly
16 other individuals can have hair consistent with the hair
17 that you're examining?

18 A Yes. There's no way to say that this hair
19 came from one particular person to the exclusion of all
20 others.

21 Q Therefore, if you examined another black
22 male's hair, it could have consistent patterns to what
23 you found here?

24 A Yes, the possibility does exist.

1 Q At least some percentage of the population
2 would have similar type hair?

3 A I would have no way of knowing the
4 population.

5 Q You've never done any studies of the
6 percentage of the population that would have similar
7 characteristics to this hair, have you?

8 A No.

9 Q And as you sit here today, you cannot say
10 that exactly the two head hairs you examined are an exact
11 match, can you?

12 A No. There are no two hairs that an exact
13 match, even from the same person. All hairs are slightly
14 different from each other. What you are looking for are
15 a range of characteristics that are similar.

16 Q Now, when you say that these characteristics
17 are similar, that is a general statement without saying
18 that they exactly match each characteristic, for
19 instance, the pigment, medulla?

20 A Well, you have a list of the characteristics
21 and ways to describe each characteristic. And if the
22 description of each is similar, then you consider the
23 characteristics similar.

24 Q Did you do any study on pubic hair?

1 A Yes.

2 Q Examining them?

3 A Yes, examining them.

4 Q Did you attempt to make any match of any
5 pubic hairs that were found in this case?

6 A Yes. I found three pubic hairs in the
7 combings. I also found a pubic hair in the dry
8 secretions.

9 Q Were you given any pubic hairs from the
10 defendant to examine?

11 A Yes, I was.

12 Q Was there any match?

13 A No. The pubic hairs I found in the rape kit
14 were consistent with the victim.

15 Q So you found no match in any of the pubic
16 hair examinations that you did?

17 A To the suspect?

18 Q Yes.

19 A No.

20 MR. DiFABIO: Thank you.

21 REDIRECT EXAMINATION

22 BY MS. ROVITO:

23 Q Miss Fertal, you just told us you found a
24 total of four pubic hairs in the evidence that came in

1 the rape kit, and they were all consistent with the
2 victim's pubic hairs?

3 A Yes,

4 Q Mr. DiFabio asked you if you had done a
5 comparison or a study on the population with this
6 specific hair?

7 A Well, statistics really doesn't hold itself
8 to hair comparisons, because it is so subjective.

9 Q But you don't do any population studies on
10 any hair comparisons you do?

11 A Oh, no, never.

12 Q Miss Fertal, are you confident in saying
13 that the hair that was found in that underwear is similar
14 and consistent with the hair that you received from Dale
15 Brison's head?

16 A Yes, I am.

17 MS. ROVITO: Nothing further.

18 MR. DiFABIO: I have no further questions,
19 Your Honor.

20 - - -

21 (Witness excused.)

22 - - -

23 THE COURT: Who else do you have?

24 MS. ROVITO: Your Honor, if I may, this is

1 Miss Fertal's exhibit. I would like her to take it with
2 her.

3 MR. DiFABIO: I have no objection, Your
4 Honor.

5 THE COURT: All right.

6 LARRY E. DAMPMAN,
7 after having been first duly sworn, was examined
8 and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. ROVITO:

11 Q Will you state your name and occupation for
12 the record, please.

13 A My name is Larry E. Dampman. I'm a
14 Detective Sergeant with the Chester County Detective's
15 Office.

16 Q How long have you been employed in that
17 capacity as a Chester County Detective?

18 A I've been a police officer for about 22
19 years, 15 of that being with the Chester County
20 Detectives.

21 Q Sergeant Dampman, were you involved in the
22 investigation of a rape committed against [REDACTED]?

23 A Yes, I was.

24 Q And when did you get involved in that