

APPELLATE COURT NO. _____

IN THE COURT OF APPEALS

BEAUMONT, TEXAS

ROY WAYNE CRINER,

APPELLANT

VS.

THE STATE OF TEXAS,

APPELLEE

APPEAL FROM THE 2ND 9TH DISTRICT COURT

OF MONTGOMERY COUNTY, TEXAS

JOHN C. MARTIN, JUDGE PRESIDING

STATEMENT OF FACTS

VOLUME 9 OF 15

(TRIAL)

COPY

Robin Cooksey, CSR, RPR

Official Court Reporter

2nd 9th District Court

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NO. 87-09-00591-CR

THE STATE OF TEXAS)	IN THE DISTRICT COURT OF
)	
VS.)	MONTGOMERY COUNTY, TEXAS
)	
ROY WAYNE CRINER)	2ND 9TH JUDICIAL DISTRICT

BE IT REMEMBERED that upon this the 23rd day of April, 1990, the above styled and numbered cause of action came to be heard for trial before the Honorable John C. Martin, Presiding Judge of the 2nd 9th Judicial District Court of Montgomery County, Texas, and a jury; and the State appearing by counsel and the Defendant appearing in person and by counsel, announced ready for said proceedings; and all preliminary matters having been disposed of, a jury was duly empaneled and sworn, and proceedings had, the following facts were adduced in evidence, viz:

A P P E A R A N C E S:

For the State of Texas:	Mr. David Walker and Ms. Patricia Burroughs Assistant District Attorneys Montgomery County, Texas
For the Defendant:	Mr. Wes Hocker and Mr. Robert Morrow Attorneys at Law Houston, Texas

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E X H I B I T I N D E X

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MAURITA HOWARTH

was called as a witness by the State of Texas and,
having been first duly sworn by the Court, testified
as follows:

DIRECT EXAMINATION

By Mr. Walker

Q. Ma'am, would you state your name for the
jury, please.

A. Maurita Howarth.

Q. Ms. Howarth, how are you employed?

A. As a forensic serologist.

Q. And who are you employed by?

A. The Texas Department of Public Safety.

Q. All right. Ms. Howarth, how long have you
been a forensic serologist for the Department of Public
Safety?

A. I've been with the department for almost six
years. I have been doing serology for close to five
years.

Q. All right. What kind of academic, initial
academic training do you have?

A. I have a Bachelor's degree in chemistry.

Q. All right. And just approximately how many

1 hours of training do you have in forensic serology?

2 A. That's difficult to estimate. I would
3 suppose in a training setting, it would be equivalent to
4 two months.

5 Q. All right. How many times have you tested or
6 analyzed different substances such as blood, saliva,
7 semen in your work as a forensic serologist?

8 A. Many times.

9 Q. All right. Have you ever been called to
10 testify in State District Court here in Texas?

11 A. Yes, I have.

12 Q. Have you ever qualified as an expert in State
13 District Court?

14 A. Yes, sir.

15 Q. How many times?

16 A. Many.

17 Q. All right. Have you ever been called to
18 testify in the United States District Court?

19 A. Yes, I have.

20 Q. Have you ever qualified as an expert in the
21 United States District Court?

22 A. Yes, I have.

23 Q. How many times?

24 A. A few.

25 Q. Okay. Let me ask you, Ms. Howarth, if you

1 had occasion to analyze any substances, if you will,
2 that were presented to you and filed under Case No.
3 L2H-55665?

4 A. Yes.

5 Q. All right. What, by the way, is that number?

6 A. That's a unique laboratory case number. The
7 "L" stands for laboratory, region -- the "2" refers to
8 the fact that this is DPS Region 2, "H" stands for
9 Houston, and then we use consecutive numbering.

10 Q. All right.

11 MR. MORROW: Excuse me, Mr. Walker. May
12 we have a running objection to this line of testimony
13 about items that were seized in violation of, as we
14 previously put on the record --

15 THE COURT: Yes.

16 MR. MORROW: -- the Fourth, Fifth and
17 Sixth Amendment rights?

18 THE COURT: Continue the running
19 objection, Robin.

20

21 BY MR. WALKER:

22 Q. Let me ask you, Ms. Howarth, with respect to
23 that unique case number, how do you maintain any control
24 over items that are sent to your laboratory? What do
25 you do?

1 A. We actually have evidence record sheets that
2 are pre-numbered with a sequential stamp, so when cases,
3 evidence is brought in on a new case, we take that first
4 sheet of paper and assign that number to all of the
5 evidence that's brought in that day. Then if any
6 additional evidence is brought in on that case, we take
7 evidence record sheets that haven't been stamped with
8 the case number and we hand write in that same case
9 number for any additional submissions on the same case.

10 Q. All right. With respect to all of the
11 submissions on a particular case, where are they kept?

12 A. Anything that is of biological nature that
13 could degrade and is of reasonable size is put into
14 either the refrigerator or the freezer until it's
15 analyzed.

16 Q. Okay. Is there any effort made to make sure
17 that all items for one particular case are kept
18 identified with that case?

19 A. Absolutely.

20 Q. All right. Is the laboratory careful in that
21 regard?

22 A. Yes, sir.

23 Q. All right. Let me ask you if you ever had
24 delivered to you in this particular case some swabs, if
25 you will, taken from the deceased person?

1 A. Yes, I did.

2 Q. All right. When were those received by
3 yourself, or the laboratory?

4 A. They were received on 10-24 of '86.

5 Q. All right. And they were delivered by whom?

6 A. Detective Sauls.

7 Q. All right. Did you ever receive any smears,
8 if you will, taken from a deceased person in this case?

9 A. Yes, I did.

10 Q. When were those received?

11 A. The previous day, 10-23 of '86.

12 Q. Delivered by whom?

13 A. Ranger Oldham.

14 Q. All right. Did you -- by the way, this
15 particular case number, L2H-55665, does it have a listed
16 victim?

17 A. Yes, it does.

18 Q. Who is that?

19 A. First name is Deanna; last name Ogg.

20 Q. All right. Let me ask you if you ever had
21 occasion to have delivered to you any particular
22 samples, fluid samples and body particles samples, I
23 suppose, from a particular suspect in this case?

24 A. Yes, I did.

25 Q. When were they received?

1 A. 10-27 of '86.

2 Q. Delivered by whom?

3 A. Ranger Oldham.

4 Q. Okay. And then let me ask you if there was,

5 subsequent to 10-27 of '86, any additional fluid or

6 blood received from the victim?

7 A. Yes, there was.

8 Q. When was that received?

9 A. 11-19-86.

10 Q. All right. With respect to those, to that

11 item received on 11-19, why was that necessary or why

12 was that received?

13 A. It was a blood sample from the victim which

14 was in a sterile, well-sealed container. We had

15 received a previous sample which was in a container

16 whose -- which may or may not have been sterile and was

17 not well sealed and had leaked.

18 Q. All right. Were you able to utilize the

19 prior sample, the one that was not well sealed?

20 A. I was able to utilize it; I was able to test

21 it.

22 Q. All right. Were you able to test it

23 conclusively or to your satisfaction?

24 A. No. I tried my two different methods and

25 wasn't able to.

1 Q. All right. Therefore, was that why the
2 second sample was requested?

3 A. Yes.

4 Q. All right. Let me ask you, if I may, Ms.
5 Howarth, what do you mean or what is meant by the
6 reference blood type?

7 A. Blood type commonly refers in common practice
8 to both ABO type and rhesus type. Most people, if you
9 were to ask them what's your blood type, they might say
10 O positive. The "O" refers to their type in the ABO
11 system and "positive" refers to their type in the rhesus
12 system or the RH system.

13 Q. All right. With respect to the ABO blood
14 type system, can you tell the jury what the various
15 blood types are?

16 A. There are four types: A, B, O, and AB.

17 Q. All right. In the ABO system, are those, in
18 fact, all of the blood types?

19 A. Yes.

20 Q. All right. Is it ever your function to
21 attempt to take blood and determine a type?

22 A. Yes.

23 Q. Do you do that in your business?

24 A. Yes, sir.

25 Q. All right. Are you experienced in that

1 regard, yourself?

2 A. Yes.

3 Q. All right. Are you familiar, Ms. Howarth,
4 with the term "secretor"?

5 A. Yes, I am.

6 Q. What is meant by that, at least in chemical
7 parlance or as to a forensic serologist?

8 A. A secretor is an individual who secretes
9 their ABO blood group substances into their other body
10 fluids; which would be saliva, semen, vaginal
11 secretions, tears, perspiration.

12 Q. All right. What -- well, I won't ask you a
13 percentage. Do all human beings secrete their blood
14 type into their other bodily fluids?

15 A. No.

16 Q. Are you able to give the jury any kind of
17 quantitative figure as to how many persons in the human
18 population are secretors and how many are not?

19 A. Roughly 25 percent of caucasians are
20 secretors and -- I'm sorry. Roughly 75 percent of
21 Caucasians are secretors and roughly 25 percent are
22 non-secretors. The figures are slightly different for
23 other race groups.

24 Q. All right. For Caucasians, about 75 percent
25 are secretors?

1 A. That's right.

2 Q. All right. Now then, when you say that a
3 person is a secretor, if you analyze that person's
4 saliva, assuming it's a good sample, what are you able
5 to determine from that saliva?

6 A. You are able to detect a blood group
7 substance.

8 Q. All right. With respect to seminal fluid,
9 can you do the same thing if it's a secretor?

10 A. Yes.

11 Q. All right. With respect to, Ms. Howarth, to
12 the samples that you received from the defendant, Roy
13 Criner, can you tell the jury what kind of samples you
14 received as delivered by Ranger Oldham?

15 A. A semen sample, a blood sample, a pulled
16 pubic hair sample, a fingernail scraping from the right
17 hand, a pulled head hair sample, and oral smears.

18 Q. All right. Did you attempt to determine a
19 blood type for the defendant, Roy Criner?

20 A. Yes, I did.

21 Q. And what is Mr. Criner's blood type?

22 A. Blood Type O.

23 Q. Okay. Were you able to or did you attempt to
24 determine whether or not Mr. Criner is what we call a
25 secretor?

1 A. I did.

2 Q. And what was the answer to that?

3 A. He is a secretor.

4 Q. Mr. Criner is a secretor.

5 A. That's correct.

6 Q. All right. Now then, with respect to Mr.

7 Criner, specifically, if you have determined that he is

8 a secretor, what does that mean? If you were to

9 analyze, let's say, a quantity or a portion of his

10 seminal fluid, what would you expect to find?

11 A. I would expect to find blood group

12 substances.

13 Q. All right. And if you were to find or to

14 analyze a quantity of his saliva, what would you expect

15 to find?

16 A. The same thing. I will expect to find blood

17 group substances.

18 Q. All right. Did you take an opportunity to

19 analyze the blood of the victim, Deanna Ogg?

20 A. I did.

21 Q. What is her blood type?

22 A. She's a blood Type O.

23 Q. Blood Type O.

24 All right. Were you able to determine in

25 your analysis whether or not Deanna Ogg was a secretor?

1 A. No, I was not.

2 Q. Okay. What did you do in an attempt to
3 determine if Deanna Ogg was a secretor? What did you
4 analyze?

5 A. I first attempted to type her blood. We're
6 able to test the blood to see if they have the mechanism
7 present to allow them to be a secretor. In this case,
8 that testing was inconclusive. Then what we do,
9 regardless of the testing of the blood, is to actually
10 test a body fluid. Usually it's saliva.

11 Q. All right. Did you have a sample in this
12 case, a saliva sample, if you will, to test for Deanna
13 Ogg?

14 A. I had an oral swab.

15 Q. All right. Is there any difference,
16 potentially, between an oral swab that you might take
17 from, let's say, anyone in the courtroom here, a living
18 person, and an oral swab that is taken from a deceased
19 person? Is there any difference in the quality of those
20 two swabs?

21 A. Yes, sir.

22 Q. All right. Which is better?

23 A. The swab from the living person would be
24 better.

25 Q. All right. Are there ever any potential

1 difficulties or problems with an oral swab taken from a
2 deceased person?

3 A. Yes, sir, there are.

4 Q. What are those problems?

5 A. One of them would be that the mouth is dried
6 out, that there is no saliva there. Another one is
7 bacteria action such that either the liquid present no
8 longer has the biological characteristics of saliva or
9 that some portion of the biological activity of the
10 saliva has changed.

11 Q. Did you, in fact, test the oral swab taken
12 from the person of Deanna Ogg?

13 A. I did.

14 Q. All right. With respect to the test that you
15 ran on that oral swab, was that, then -- well, let me
16 ask
17 you this: Was that the most likely piece of evidence or
18 item to tell you whether or not she was a secretor?

19 A. We find it to be or we use it as more
20 reliable than the results of typing the blood.

21 Q. All right. Why?

22 A. Because there is the theoretical possibility
23 that someone could have the mechanism in their blood to
24 allow them to be a secretor, but that they would secrete
25 their blood group substances at such a low level that we

1 wouldn't detect it by the procedure that we use.

2 And we use the procedure that we do, which
3 operates at a certain threshold for a variety of
4 reasons. But what I'm saying is, we could take the test
5 more sensitive. So, we could detect blood group
6 substances from a low secretor, but not even -- that's
7 really defeating our purposes.

8 Q. All right. Now then, if you have a situation
9 of sexual assault or aggravated sexual assault where
10 there may be fluids found upon the person of the victim
11 that do not belong to that victim, how do you generally
12 refer to the person, if you will, that has left those
13 fluids there? What parlance do you use?

14 A. If we identify semen, the term that we use is
15 "semen donor."

16 Q. Donor. Okay. If you, in this particular
17 case, if Deanna Ogg was, in fact, a secretor, and, in
18 fact, she was, would you be able to tell us anything
19 about the status of the donor?

20 A. The donor of --

21 Q. Any fluids found upon her.

22 A. That would depend on the level at which the
23 fluid was found.

24 Q. All right. In this particular case, was
25 Deanna Ogg a secretor or not, do you know?

1 A. I do not know.

2 Q. All right. Let me ask you if you are
3 familiar with the term "amylase."

4 A. I am.

5 Q. And what is amylase?

6 A. It is a constituent of saliva.

7 Q. How do you spell it, please?

8 A. A-m-y-l-a-s-e.

9 Q. All right. How does the constituent amylase
10 play a role in your effort to determine if someone is a
11 secretor? What do you do with the amylase?

12 A. I test for the amount of amylase present on a
13 swab relative to a control. If the amount, the
14 concentration of the amylase is stronger than the
15 concentration of my control, then I know that I've got a
16 good, strong saliva sample that I can interpret
17 properly.

18 Q. All right. In the case of the oral swab of
19 Deanna Ogg, what level of amylase did you have present?

20 A. I had a level that was less than my control.

21 Q. All right. With regard to the level that you
22 did have, was it of any value to you in your test in
23 making any kind of determination?

24 A. No. I can make some speculations, but I
25 can't make any determinations.

1 Q. Okay. Let me ask you if you analyzed the
2 rectal swab delivered to you by Sargeant Sauls on
3 October 24th.

4 A. Yes, I did.

5 Q. All right. With respect to blood group
6 substances, did you find any blood group substance on
7 that rectal swab?

8 A. I did.

9 Q. What blood group substance did you find?

10 A. Blood group substance H.

11 Q. All right. That's on the rectal swab taken
12 from Deanna Ogg?

13 A. That's correct.

14 Q. Now then, first of all, I suppose, could you
15 tell the jury what a blood group substance is, perhaps
16 briefly?

17 A. Yes, sir. When we type a person's blood, if,
18 for example, they are Type A, that A in their blood is
19 called an antigen. Then you also have antibodies. When
20 that A is secreted into a body fluid, it's called a
21 blood group substance because it's chemically or
22 biologically slightly different than it is in the blood.
23 So, we call it a blood group substance. The blood group
24 substance secreted by a Type A individual is called
25 blood group substance A.

1 Q. Let me hold you up right there.

2 MR. WALKER: Your Honor, may I approach
3 the blackboard?

4 THE COURT: Yes.

5

6 BY MR. WALKER:

7 Q. All right. Ms. Howarth, if I may ask you to
8 perhaps just reiterate just a little bit. If you have
9 blood Type A, what blood group substance will you find
10 in that blood type?

11 A. A and H.

12 Q. All right. And I think -- how could we
13 abbreviate blood group substance, BGS; is that right?

14 A. Yes, that's common.

15 Q. Blood group or blood Type A will contain the
16 blood group substance A and H.

17 A. That's right.

18 Q. All right. What about blood group Type B?

19 A. Will contain blood group substances B and H.
20 Again, this is if the person is a secretor.

21 Q. Right.

22 What about blood Type AB?

23 A. They'll secrete blood group substances AB and
24 H.

25 Q. All right. What about blood Type O?

1 A. They will secrete blood group substance H.

2 Q. All right. Now, once again, the blood group
3 substances will be found in body fluids, if you will,
4 for people who are secretors only; is that right?

5 A. That's correct.

6 Q. All right. And blood Type O gives the blood
7 group substance H only.

8 A. That's correct.

9 Q. All right. Now then, in the rectal swab that
10 you analyzed that came from the body of Deanna Ogg, what
11 blood group substance did you find?

12 A. I found blood group substance H.

13 Q. All right. Now then, if the defendant, Roy
14 Criner's blood type is O, as you've testified, and if he
15 is a secretor, as you've testified, is it consistent,
16 then, that from a body fluid that he left someplace,
17 that you would find the blood group substance H?

18 A. Yes, it is.

19 Q. All right. Now then, this blood group
20 substance H, if the victim Deanna Ogg was a secretor
21 with the blood Type O, could the presence of that H
22 blood group substance be accounted for by her if she was
23 an O secretor?

24 A. Yes, it could.

25 Q. All right. In your analysis of the oral swab

1 taken from Deanna Ogg, are you able to tell this jury
2 conclusively one way or the other whether she is an O
3 secretor or an O non-secretor?

4 A. I'll restate that just a little, if it's all
5 right. I can't tell you anything about their blood
6 type. By testing her oral swab, I cannot say whether
7 she is a secretor.

8 Q. Okay.

9 A. Her blood type was determined by typing her
10 blood.

11 Q. She is blood Type O?

12 A. Yes.

13 Q. From testing the oral swab, you cannot tell
14 us whether she is a -- or was a secretor or not; is that
15 correct?

16 A. That's right.

17 Q. All right. So then, if I understand it
18 correctly, if we're to try and determine how the blood
19 group substance H was found on the rectal swabs, it's
20 possible that it was left there by Deanna Ogg; is that
21 correct?

22 A. Yes.

23 Q. Is it also possible that it was left there by
24 the defendant, Roy Criner?

25 A. You will have to be very clear on what

1 scenario we're operating under here.

2 Q. Okay. Well, rather than -- let me ask you
3 another question that might confuse you and me. Tell
4 the jury if there are several scenarios that could
5 qualify your answer.

6 A. I don't know whether the victim is a secretor
7 or not and I have to assume -- I can't answer the
8 question without assuming one way or the other. So
9 rather than make an assumption that I can't make, I
10 would operate under one scenario or the other.

11 MR. HOCKER: And at this time, Judge,
12 based upon her answer, I would object to any further
13 scenarios.

14 THE COURT: I think she's through.

15 MR. HOCKER: Okay.

16

17 BY MR. WALKER:

18 Q. Let me ask you if on the rectal swab the only
19 blood group substance found was H.

20 A. Yes.

21 Q. All right. If -- let me ask you this: If
22 the blood group substance H is found by itself, is it
23 possible, is it ever possible that the other blood group
24 substance A and B might have been present but simply had
25 deteriorated or something?

1 A. That's a possibility.

2 Q. All right. If, however, the blood group
3 substance H is found by itself, that eliminating that
4 other possibility, what blood type and secretor status
5 does that indicate?

6 A. It indicates an O secretor.

7 Q. All right. And Roy Criner is an O secretor?

8 A. Yes, he is.

9 MR. WALKER: Your Honor, I'll pass the
10 witness.

11 THE COURT: We'll take a break.

12

13 (WHEREUPON, A SHORT RECESS WAS TAKEN,
14 AND PROCEEDINGS CONTINUED IN THE PRESENCE OF THEY
15 JURY AS FOLLOWS:)

16

17 MR. HOCKER: May I proceed, Your Honor?

18 THE COURT: Yes.

19

20 CROSS-EXAMINATION

21 By Mr. Hocker

22

23 Q. Is it Miss or Mrs. Howarth?

24 A. Howarth.

25 Q. Howarth? Ms. Howarth, I will endeavor to be

1 brief; see what we can agree or disagree upon. Can we
2 agree or disagree that approximately half or 50 percent
3 of all white males in this country are Type O blood?

4 A. I'm sorry.

5 Q. Can we agree or disagree that approximately
6 50 percent of all white males in this country are of
7 Type O blood?

8 A. The figure that I use is about 44 percent,
9 and that would be regardless of gender. That's just a
10 figure for white individuals.

11 Q. And from your testimony, 75 percent of that
12 number are secretors; is that correct?

13 A. Yes, sir.

14 Q. And for the terms of that percentages,
15 approximately what is the data base group?

16 A. I don't have that number in front of me.
17 It's based upon the information from the Journal of
18 Forensic Science; and it's a compilation of a number of
19 separate studies, each of which had at least 300 people.

20 Q. It's extrapolated; it's well into the
21 millions and millions of people.

22 A. It's extrapolated. We use the figures and
23 extrapolate to the entire population.

24 Q. What do you come up with?

25 A. I'm sorry. I don't understand your question.

1 Q. What's the number that gives you your
2 extrapolation number?

3 A. The figure I use is 44 percent.

4 Q. Of what?

5 A. Of the white population is, are Type O
6 individuals.

7 Q. And how many of those people are they, based
8 upon your numbers?

9 A. In this country?

10 Q. Uh-huh.

11 A. I don't know. I don't know what the
12 population of the United States is.

13 Q. Is it over 200 million?

14 A. The figure that I've always assumed is about
15 200 million. I don't know accurately.

16 Q. And I take your testimony that all we know
17 positive from your results is that the sample, the donor
18 sample was a Type O secretor.

19 A. That's correct.

20 Q. Can you even say that much?

21 A. The person to whom that blood group substance
22 belongs is a Type O secretor.

23 Q. Is it possible to take the -- a semen sample
24 from a male individual and compare it with an unknown
25 quantity of semen and determine as an absolute fact that

1 the sample belongs to the donor?

2 A. No, it's not.

3 Q. What is DNA fingerprinting?

4 A. DNA fingerprinting is a term that's commonly
5 used to, especially in the media, to refer to DNA typing
6 in a forensic sense.

7 Q. Was that done in this case?

8 A. No, it was not.

9 Q. Now, you also did some other testing and
10 work, did you not, on other items of evidence submitted
11 to you?

12 A. Yes, I did.

13 Q. Let's see what the results of those tests
14 were. In looking at your report, I see that one hair
15 was from the inside back window of a truck; is that
16 correct?

17 A. I received a hair that was labeled as having
18 come from there.

19 Q. What did you do to that hair?

20 A. I'd have to check my notes. I'm sorry. I'll
21 be just a second. That hair was mounted on a microscope
22 slide with a chemical that allows me to see the internal
23 structure of the hair.

24 Q. And were you able to do that?

25 A. Yes, I was.

1 Q. What were you looking for?

2 A. We look at a number of characteristics of a
3 hair in order to compare a known hair to an unknown
4 hair.

5 Q. And you had known hairs of Deanna Ogg; is
6 that correct?

7 A. Yes.

8 Q. And is it fair to say that you were testing
9 that unknown hair to determine if it had like or similar
10 characteristics of those of the victim, Deanna Ogg?

11 A. Yes, it is.

12 Q. And were you able to make such a
13 determination as to that one hair inside the back window
14 of the truck?

15 A. Yes, I was.

16 Q. What was that determination?

17 A. It was not similar to the known hair sample
18 that I received from the victim.

19 Q. Now, I believe in Item 1B of your report,
20 that you received trace evidence from the right
21 floorboard of the truck. Tell the jury what you mean by
22 trace evidence.

23 A. Trace evidence refers collectively to any
24 minute piece of evidence that we would work with; and
25 normally it would be hairs, fibers and soil. It could

1 also include glass, insulation, a number of other
2 things.

3 Q. Were you provided with known soil samples
4 from the area where the body of Deanna Ogg was found?

5 A. I'm going to have to check. I don't
6 remember.

7 No, I was not.

8 Q. Did you run any tests on this trace evidence
9 received from the right floorboard of the truck?

10 A. Yes, I did.

11 Q. What did you compare it to?

12 A. There were a number of things in there that
13 were -- there were two hairs that I compared to the
14 known hairs of the victim.

15 Q. And the result of that comparison?

16 A. One of them actually turned out to be a
17 fiber, the other one was a human head hair, but it was
18 not similar to the victim's known hair samples
19 submitted.

20 Q. You also received a known sample of head and
21 pubic hair from Roy Criner, did you not?

22 A. Yes, I did.

23 Q. You also received loose pubic hair from the
24 victim in this case, Deanna Ogg, did you not?

25 A. Yes, I did.

1 Q. Loose and pulled pubic hair, did you not?

2 A. That's right.

3 Q. Did you make a comparison of the samples
4 received concerning Deanna Ogg with those that you have
5 known samples of Roy Criner?

6 A. Yes, I did.

7 Q. You made a comparison, and the result of that
8 comparison or test?

9 A. There were five hairs from the pubic combing
10 that I analyzed.

11 Q. Of Deanna Ogg?

12 A. From the pubic hair combing of Deanna Ogg
13 that I did further analysis on. Five of them I did only
14 macroscopic tests, which means that with low power
15 magnification, I was able to say that they were similar
16 to the victim's hair and not to the suspect's pubic
17 hair.

18 There was one hair that I did mount in the
19 chemical I spoke of earlier and looked at under high
20 powered magnification; and in that case, also, it was
21 not similar to the pubic hair of Roy Criner that was
22 submitted.

23 Q. Now, you also had some hair that was in the
24 hand taken from the hand of the deceased, Deanna Ogg,
25 that wasn't similar to her hair, did you not?

1 A. I'll have to check. No, it may have been
2 submitted as being dissimilar; but according to my
3 analysis, it was similar to her head hair.

4 Q. On Item 8, loose hair from the right hand of
5 the victim.

6 A. Yes, sir.

7 Q. And you claim that was similar to hers?

8 A. That's correct.

9 Q. It was not his; it was not similar to Roy
10 Criner's, was it?

11 A. That's correct.

12 Q. Was there loose pubic hair from Deanna Ogg
13 that was not similar to hers?

14 A. No, there was not. Well, actually I need to
15 check that. We don't explicitly check that. What we're
16 looking for is a comparison to whatever known sample we
17 have from another individual. In this case I noted that
18 there were the five hairs that were similar to hers and
19 different from the suspect's. The one hair that I
20 mounted, in my notes, I don't explicitly say whether or
21 not it was similar to hers because that's not something
22 we normally do.

23 Q. Certainly it could have been a hair
24 dissimilar to hers and dissimilar to Roy Criner's. That
25 would be consistent with your test.

1 A. It is a possibility from what I have in my
2 notes and from what I recall.

3 Q. What were the other negative -- wait a
4 minute. Basically, then, the thrust of your test, you
5 were trying to compare items from Deanna Ogg, whether
6 they were hers or somebody else's, to rule in or rule
7 out Roy Criner.

8 A. I don't think I understood your question.

9 Q. Well, you only tested those samples given to
10 you purported to be from Deanna Ogg as against Roy
11 Criner; isn't that correct?

12 A. Yes.

13 Q. Those were the only comparisons you made.

14 A. Yes.

15 Q. You didn't compare them to determine if they
16 were hers or some other male's other than Roy Criner's.

17 A. That's correct.

18 Q. What other tests did you compare these items
19 taken from Roy Criner that proved to be negative in your
20 testing -- tell the jury about.

21 A. I'll have to be very thorough in going
22 through my notes to make sure. I can't explicitly say
23 that I tested anything else and compared to it Roy
24 Criner and it was negative.

25 Q. The converse of that is true, too.

1 A. That I tested anything and it was positive?

2 That's true.

3 MR. HOCKER: I pass the witness.

4 MR. WALKER: Just another question or
5 two, Ms. Howarth.

6

7 REDIRECT EXAMINATION

8 By Mr. Walker

9

10 Q. In the analysis of all of the samples that
11 were brought to you, did you find any spermatozoa?

12 A. Yes, I did.

13 Q. Where did you find them?

14 A. On the vaginal swab and on the rectal swab.

15 Q. All right. Now then, is it possible as far
16 as you know in your study and experience, to determine
17 DNA from spermatozoa?

18 A. To determine the presence of DNA?

19 Q. Yes.

20 A. Yes, it is.

21 Q. All right. You're familiar with the
22 laboratory in New York known as Life Codes?

23 A. I am.

24 Q. Are you familiar with the laboratory in
25 Maryland known as Cell-Mar?

1 A. Yes, I am.

2 Q. All right. And I think there may be one or
3 two others. Does the FBI have a laboratory that does
4 DNA testing now?

5 A. Yes, it does.

6 Q. If you have a sufficient quantity of
7 spermatozoa, do you know in your experience if it is
8 possible to undertake one of these DNA tests?

9 A. Yes, it is.

10 Q. All right. What quantity of spermatozoa is
11 necessary, as you understand it today?

12 A. At a bare minimum, about 10,000 individual
13 spermatozoa.

14 Q. All right. Did you, at anyone's request,
15 make a determination of how many spermatozoa were
16 present in the items of evidence submitted to you from
17 the body of Deanna Ogg?

18 A. Yes, I did.

19 Q. Who requested that you do that?

20 A. You did.

21 Q. All right. How many spermatozoa did you find
22 in all of the samples submitted to you from Deanna Ogg?

23 A. The original smears which were analyzed
24 before your request, but we don't report a quantity.
25 The original vaginal smear, there were about twenty

1 spermatozoa and on the original rectal smear, there were
2 less than that, about three, according to my notes. And
3 per your request, I took the swabs, I extracted them,
4 centrifuged them and made new smears of my own. When we
5 do that, we don't quantitate; we don't count how many
6 sperm there are per field. We just give a rough guess;
7 and in this case, there were very few and this is from
8 the very concentrated sample.

9 Q. All right. In your opinion, then, as a
10 chemist with approximately six years experience with the
11 Department of Public Safety, were there sufficient
12 spermatozoa present in any of those samples to submit
13 either to Life Codes or Cell-Mar?

14 A. No.

15 Q. Were we even close?

16 A. No.

17 Q. Consequently, DNA typing would not have been
18 possible in this case; is that right?

19 A. That's my opinion, yes.

20 Q. All right.

21 MR. WALKER: I'll pass the witness, Your
22 Honor.

23 MR. HOCKER: I have nothing further at
24 this time.

25 THE COURT: You may step down.

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MR. WALKER: Your Honor, may this witness
be released to return to Houston?

THE COURT: Yes.

MR. WALKER: Your Honor, the State will
call Charlie Self.

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Q. Same person?

A. Yes, sir.

MR. HOCKER: No further questions.

THE COURT: You may step down.

MR. WALKER: Your Honor, may this witness
be released to return to his work?

THE COURT: Yes.

Okay, ladies and gentlemen, we'll recess
until 9:15 in the morning.

(WHEREUPON, COURT WAS ADJOURNED UNTIL
APRIL 24, 1990 AND PROCEEDINGS CONTINUED AS FOLLOWS:)

1 THE STATE OF TEXAS)

2 COUNTY OF MONTGOMERY)

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