

MEMORANDUM

CR-4144
Dail, Dwayne Allen

December 22, 1988
LAG

On December 16, 1988, I went over to Dave Grimes' office to discuss this matter. While I was there he called D. T. Hamlin at the SBI to talk to him about the lab reports. At first, D. T. Hamlin refused to speak to him, but then got confirmation from the D.A.'s office. He called back and Dave asked him about what was done with the hair samples. Dave asked him first of all about the absence of pubic hair other than the victims. Mr. Hamlin said that in 75% of the cases there is no transfer of pubic hair from the suspect to the victim. Dave went on to ask him about the head hair report and Mr. Hamlin said the characteristics that they matched were color pigmentation and cuticle. Mr. Hamlin said it was "highly unlikely that the head hair belonged to anyone other than Dwayne Dail".

The good news was that Mr. Hamlin said that there were two caucasian pubic hairs found in the vacuumings which were not consistent with those of Dwayne Dail. Dave asked him which report that was in and Mr. Hamlin said it was not in any report, just in his notes. Getting back to the head hair, Dave asked him if he knew any kind of percentage of people who have similar hair characteristics, or how many people randomly would have hair that matched. Mr. Hamlin said it is extremely hard to find people who hair that will match.

Neither Dave nor myself know whether or not the D.A. is aware that two Caucasian pubic hairs were found. Also, Dave and I were wondering whether or not it would be worth it to request a non-testimonial order ordering the other suspect, if there was one, to have a hair sample taken from him and matched to the two pubic hairs. Neither one of us thought that this would be granted but it is a thought.

LAG/rbm

OPENING STATEMENTS

1 THE COURT: Will there be opening statements?

2 MR. STRICKLAND: Your Honor, may I approach the
3 bench with counsel?

4 (BENCH CONFERENCE)

5 THE COURT: Ladies and gentlemen of the jury, at
6 this time the district attorney and attorney for the
7 defendant will make what is known as opening statement and
8 the purpose of an opening statement is narrow and limited.
9 It should be a preview of what each contends he or she can
10 support with competent and admissible evidence.

11 You must not consider what is said in the opening
12 statements as evidence. The evidence will come in the form
13 of the testimony of witnesses, stipulations of counsel or
14 any exhibits offered by the parties. The Court will limit
15 the State to five minutes and the defendant to five
16 minutes. Jury is with the State.

17 MR. STRICKLAND: Thank you, Your Honor.

18 May it please the Court, ladies and gentlemen of
19 the jury: We're about to begin the trial of this case. As
20 His Honor has said, what I will make is a very brief opening
21 statement and my statement, as he has instructed you, is not
22 evidence in the case. I ask that you keep an open mind,
23 that you listen to all the evidence, both from the State as
24 well as from the defendant, and at the end of the day it
25 will be your turn to decide the facts in the case.

1 The defendant is charged with one count of first
2 degree burglary, one count of first degree sex offense, one
3 count of first degree rape, one count of indecent liberties
4 and lewd and lascivious act allegedly committed on the early
5 morning hours on the 4th of September, 1987, almost two
6 years ago.

7 The State's evidence will show what we hope will
8 convince you that the defendant about 2:30 in the morning,
9 4th of September, 1987, broke into the room -- apartment
10 house and in the room occupied by a young lady named
11 [REDACTED]; that he came through a window, that he
12 brandished a knife and that he proceeded to commit certain
13 sex acts upon her. Evidence of what she told her mother,
14 what she told the police and that the victim in this case
15 will identify the defendant as the perpetrator of this
16 crime.

17 I ask that you listen to the testimony carefully
18 and yesterday when I was picking the jury, I made a certain
19 remark which I didn't mean to be funny. I said it for a
20 reason when I asked you if you had ever seen trials in the
21 movies and television. I did not try to put any humor in a
22 very, very serious proceeding here. I was trying to make a
23 point this is not the movies, this is not television. The
24 State and the defense in their case will be calling real
25 life people telling the situation in a very stressful

1 atmosphere of what happened to them. None have any prepared
2 scripts, none have teleprompters, they are just trying to
3 tell what happened.

4 I ask that you take this into consideration, that
5 you listen carefully to all the testimony, and the State is
6 confident at the end of this case that you will be convinced
7 beyond a reasonable doubt that the defendant is guilty as
8 charged. Thank you.

9 THE COURT: Ms. Albertson.

10 MS. ALBERTSON: Dwayne Allen Dail is a 20-year-
11 old white male as he sits before you here today. He's been
12 charged with all the charges that the district attorney has
13 told you about. You've all been questioned on voir dire,
14 you all stated you don't know anything about this incident
15 so now you will hear what happened on September 4, 1987, and
16 you will decide what the facts are in this case.

17 Mr. Dail will offer evidence in this case when he
18 gets his opportunity. He will testify. He will tell you
19 that September 4, 1987, was no different day than any other
20 in his life. He did not go to [REDACTED] home,
21 he didn't go to [REDACTED] home, he was nowhere in the
22 area on that night. He'll tell you as best he can now two
23 years later almost what he was doing, where he was and
24 definitely that he was not there.

25 You'll hear from other witnesses who will tell

1 you where he was, what he was doing, what his appearance was
2 during this time of his life. You'll see other physical
3 evidence concerning that.

4 As Mr. Strickland has asked you, we'd ask you to
5 please listen carefully to all the evidence because that's
6 the key in this case. What is told to you from that witness
7 stand and from any documentation you might hear, that's when
8 you'll be able to decide the facts in this case and that's
9 what is crucial.

10 So please not only listen to what is going on in
11 the courtroom but watch. Watch the demeanor of the
12 witness. Think about what this person is saying and if that
13 makes sense. Use your common sense and we're satisfied that
14 after hearing all of the evidence in this case, which would
15 mean that you would hear the State's evidence first and then
16 the defendant's evidence, then arguments of counsel and
17 instructions from the Judge, then you go back in the jury
18 room and make your deliberations to determine the facts in
19 this case. We're satisfied when you get to that point that
20 you will render a verdict of not guilty on all charges.
21 Thank you.

22 THE COURT: Call your first witness.

23 MR. STRICKLAND: Thank you, Your Honor. Your
24 Honor, State calls as the first witness [REDACTED]

25 [REDACTED]

1 DIRECT EXAMINATION BY MR. STRICKLAND:

2 Q. Would you please state your name and address, please.

3 A. My name is Lucy Milks from Raleigh, North Carolina.

4 Q. How are you employed, Ms. Milks, and in what capacity?

5 A. I'm employed as a forensic serologist at the North
6 Carolina State Bureau of Investigation crime laboratory.

7 Q. You say you're a forensic serologist.

8 A. Yes, sir.

9 Q. Would you please tell the jury what a forensic
10 serologist is?

11 A. Examines items of evidence in criminal cases for the
12 presence of blood or body fluids. If these are found, they
13 are analyzed to try to determine who they could have
14 originated from and results are testified to in a court of
15 law.

16 Q. You examine body fluids such as blood and so forth?

17 A. Yes, sir.

18 Q. How long have you been employed as a forensic
19 serologist?

20 A. Since May 1984.

21 Q. May 19 when?

22 A. '84.

23 Q. Has all that time been at the S.B.I. lab in Raleigh?

24 A. Yes, sir.

25 Q. Ms. Milks, what's your educational background?

1 A. I received a Bachelor of Science degree in medical
2 technology from the University of North Carolina, Chapel
3 Hill.

4 Q. What subsequent specialization and education and
5 training have you had in the field of forensic serology with
6 the S.B.I.?

7 A. I completed a two-year training course at the S.B.I. as
8 well as a two-week basic serology course at the FBI.

9 Q. Have you ever testified before as a forensic serologist
10 in any cases in North Carolina?

11 A. Yes, I have.

12 Q. About how many cases do you think you've testified in?

13 A. Roughly 25 to 30.

14 MR. STRICKLAND: Tender her as an expert as a
15 forensic serologist.

16 MS. ALBERTSON: No objection.

17 THE COURT: All right.

18 Q. I will hand you what has been marked as State's Exhibit
19 No. 1. Take a look at this box that says rape evidence
20 collection kit.

21 A. (Witness complies.)

22 Q. Have you ever seen that evidence rape kit before?

23 A. Yes, I have.

24 Q. Can you tell me where it was that you've seen it?

25 A. I received this at the laboratory in Raleigh and I can

1 recognize it because it has my case number, date I received
2 it and my initials on it.

3 Q. Is this what you do when you normally receive a rape
4 kit?

5 A. Yes, sir.

6 Q. Would you please open up the rape kit, please, ma'am.

7 Take a look first at State's Exhibit No. 3, which
8 has been previously identified as the sanitary napkin and
9 lady's panties.

10 Can you identify those items?

11 A. Yes, I can. It has my case number, date I received it
12 and my initials and item number on it.

13 Q. Is this your normal procedure in identifying evidence?

14 A. Yes, it is.

15 Q. I hand you now what has been marked as State's Exhibit
16 No. 4.

17 Would you take a look at that item, please. Can
18 you identify that?

19 A. Yes, I can. It has my case number, date I received it
20 and my initials on it.

21 Q. For what purpose did you receive these items in the
22 laboratory?

23 A. I was to perform a laboratory examination on them.

24 Q. Did you in fact perform a laboratory examination on the
25 two state's exhibits I just handed you?

1 A. Yes, I did. I took the vaginal smears and took a
2 cutting from the crotch of the panties, I stained them, and
3 then looked microscopically for the presence of
4 spermatozoa. If this is found, it's indicative of semen
5 being present.

6 Q. What was the result of your examination of these items?

7 A. Okay. On the vaginal smears as well as on the panties
8 and sanitary napkin I found semen.

9 MS. ALBERTSON: Pardon me?

10 A. On the vaginal smears, panties and sanitary napkin I
11 found semen.

12 MS. ALBERTSON: Semen?

13 A. Yes, ma'am.

14 THE COURT: You said on the smears and the
15 panties? What did you say?

16 A. I found it on the vaginal smears and I made smears from
17 the panties and from the sanitary napkin.

18 THE COURT: You found semen on all?

19 A. Yes, sir.

20 Q. All three that you found presence of semen?

21 A. Yes, sir.

22 Q. What did you do with these items of evidence after you
23 performed this laboratory examination?

24 A. I sealed them back into the kit and I mailed it back to
25 Officer Karen Green.

1 Q. What date do your records reflect it was mailed back to
2 her?

3 A. It was mailed back on October 23, 1987.

4 Q. What was that date?

5 A. October 23rd.

6 Q. October 23rd.

7 What is the procedure in the S.B.I. laboratory
8 for preserving evidence, security of it?

9 A. It is always kept in our custody and control. We
10 refrigerate evidence, and it's always -- it stays with me in
11 my room, which is locked, until it's mailed back or
12 submitted to someone else.

13 Q. During the time that these items were in your exclusive
14 care and control -- during the time you had them, they were
15 within your exclusive care and control except for times they
16 were locked in the evidence locker?

17 A. Yes, sir.

18 Q. And other than the examinations that you performed on
19 them, did you change them in any other way?

20 A. No.

21 Q. Do these items appear to be similar or in the same
22 condition as they were when you sent them back from the
23 laboratory, the best you can tell?

24 A. As far as having my initials on it, everything is the
25 same.

1 Q. You didn't do anything to this evidence except examine
2 it for the purpose for which it had been sent to you; is
3 that correct?

4 A. That's correct.

5 Q. You didn't add anything or change anything or anything
6 like that?

7 A. No, I did not.

8 MR. STRICKLAND: I have no further questions.

9 CROSS-EXAMINATION BY MS. ALBERTSON:

10 Q. Ms. Milks, you stated that you looked for spermatozoa?

11 A. Spermatozoa.

12 Q. Is that the same as semen?

13 A. It's a component of semen.

14 Q. So a part of it?

15 A. Yes, ma'am.

16 Q. But you actually found semen in this case?

17 A. I found the sperm.

18 Q. Is that the spermatozoa?

19 A. It's the reproductive cell in semen.

20 Q. So that's what you found?

21 A. That's correct.

22 Q. I believe your statement was that's usually indicative
23 of sperm or semen being present. What does "indicative"
24 mean?

25 A. It means that if you find sperm then you do have semen

- 1 present.
- 2 Q. So if you find spermatozoa, it's semen?
- 3 A. Yes.
- 4 Q. Can't be anything else?
- 5 A. No, ma'am.
- 6 Q. You found that in all three of these items?
- 7 A. Yes, that's correct.
- 8 Q. Did you ever do an examination on the same set of
- 9 evidence again?
- 10 A. Yes, I did.
- 11 Q. When was that?
- 12 A. The evidence was resubmitted to the lab on November 20,
- 13 1987.
- 14 Q. At that time, you not only received this rape kit but
- 15 you also got samples concerning Mr. Dail, isn't that
- 16 correct?
- 17 A. That's correct.
- 18 Q. You received a blood sample from Mr. Dail, pubic hair
- 19 sample, head hair samples and two saliva swabs; is that
- 20 correct?
- 21 A. That's correct.
- 22 Q. You used the blood samples and the saliva swabs in an
- 23 attempt to match those to the semen, did you not?
- 24 A. That is correct.
- 25 Q. Your analysis of this showed you were not able to match

1 it, isn't that correct?

2 A. When we do our analysis --

3 MS. ALBERTSON: Objection, Your Honor. I ask for
4 a yes or no answer.

5 THE COURT: You can answer it yes or no and then
6 explain.

7 A. Would you rephrase the question, please?

8 Q. Your analysis showed that you could not match the blood
9 or the saliva of Mr. Dail to the semen that you had from Ms.
10 [REDACTED]?

11 A. That is correct.

12 THE COURT: Now do you want to explain that?

13 A. Yes. You may be familiar --

14 THE COURT: Talk in the microphone so I can hear
15 you.

16 A. You may be familiar with the ABO blood system in blood.
17 Everybody's blood will type out as type A, type B, O, AB.

18 There is a system called the secretor system. If
19 you are a secretor that means your ABO blood type will be
20 secreted into body fluids. If you're a nonsecretor, even
21 though your blood would type out at type A it would not be
22 found in any of your body fluids such as semen or saliva.

23 In this particular case, when I typed out Ms.
24 [REDACTED] blood, it turned out she was a nonsecretor so I
25 would not expect to find her ABO type in her vaginal fluid.

1 I typed out Mr. Dail's blood and he is also a
2 nonsecretor. Therefore, neither one of them would secrete
3 their ABO type into body fluids.

4 When I analyzed the semen that I found, I did not
5 detect any ABO type. That would be what you would expect if
6 you had two nonsecretors. However, it's also possible that
7 there was not enough semen present and I did not pick up any
8 ABO type.

9 Q. The fact is you could not match the blood or saliva of
10 Mr. Dail to the semen that you had there that you had found?

11 A. That's correct, I cannot implicate or eliminate.

12 Q. Pardon me?

13 A. Implicate him or eliminate him.

14 Q. Right, you can't say it was him or it was not --

15 A. Right.

16 Q. -- based on the physical evidence you've got?

17 A. Right.

18 Q. And did you remove anything from that rape kit the
19 second time you got it?

20 A. Yes, I did.

21 Q. You actually took some hair samples and sent them on to
22 a T. Hamlin, did you not?

23 A. That's correct.

24 Q. That's why that rape kit isn't complete as it sits right
25 there in front of you?

- 1 A. Yes, ma'am.
- 2 Q. You mailed the kit back minus the hair samples?
- 3 A. That's correct.
- 4 Q. If you had had Mrs. [REDACTED] being a nonsecretor and
5 the perpetrator being a secretor in this case and had not
6 had his blood type, would you have been able to tell
7 anything different?
- 8 A. If the assailant had been a secretor you would have
9 hoped to have picked up his ABO type.
- 10 Q. But you found no ABO type at all?
- 11 A. No.
- 12 Q. And because maybe you didn't have enough of it or maybe
13 because it's a nonsecretor?
- 14 A. That's correct.
- 15 Q. So the bottom line is this was inconclusive on that
16 aspect?
- 17 A. Yes, ma'am.
- 18 Q. Did you do anything with the victim's gown?
- 19 A. No, I did not analyze that.
- 20 Q. Is there a reason why you did not analyze it?
- 21 A. I already found semen in the rape kit so there was no
22 point in examining the nightgown.
- 23 Q. So you sent the gown back?
- 24 A. I sent the gown back.
- 25 Q. You never looked at a white rag?

- 1 A. No, ma'am.
- 2 Q. Or any bed sheets?
- 3 A. No, ma'am.
- 4 Q. The second time, when was the kit returned back to Wayne
5 County, if it was?
- 6 A. It was returned back, mailed back on January 25, 1988.
- 7 Q. Do you know when it was received by you?
- 8 A. The second submission?
- 9 Q. Yes.
- 10 A. It was received on November 20th, 1987.
- 11 Q. It was returned when?
- 12 A. January 25, 1988.
- 13 Q. Does that rape kit indicate it's been sent back and
14 forth two times now?
- 15 A. Let's see. Yes, I have both dates on here.
- 16 Q. So that's all marked that you did analyze the stuff
17 twice?
- 18 A. Uh-huh.
- 19 Q. You don't have with you today the samples that you had
20 concerning Mr. Dail, do you?
- 21 A. They are not here in front of me, no.
- 22 Q. Did you return them as well as the rape kit?
- 23 A. Except for the hairs, I did.
- 24 Q. You sent Mr. Dail's hairs on too, did you not?
- 25 A. To Mr. Hamlin, uh-huh.

1 Q. But this was all in a separate box, Mr. Dail's samples
2 from Ms. [REDACTED] samples?

3 A. Yes, ma'am.

4 Q. That box was returned to the Wayne County law
5 enforcement?

6 A. Yes.

7 Q. Or excuse me, Goldsboro Police Department?

8 A. Yes, ma'am.

9 Q. Do you know who you returned it to?

10 A. That one went back to Officer Andrew Pinto.

11 MS. ALBERTSON: I have nothing further.

12 REDIRECT EXAMINATION BY MR. STRICKLAND:

13 Q. The report that you just made concerning the presence of
14 semen on the items which you've testified to was made the
15 first time you received the rape kit; is that correct?

16 A. My first report --

17 Q. That was your first report?

18 A. Yes, it's the one that said I found semen.

19 Q. And that report was dated October 12th?

20 A. Yes, October 12th, 1987.

21 Q. So any subsequent mailing back of, say, this rape kit
22 has really no import so far as your conclusion based on your
23 first examination; is that correct?

24 A. Not based on the presence of finding semen.

25 Q. Right. Anything that might have happened to that rape

1 kit after October 12th when you performed your analysis
2 would really be irrelevant; is that correct?

3 MS. ALBERTSON: Objection.

4 Q. I mean so far as your findings?

5 A. As far as my findings on the original submission.

6 Q. Nothing anybody would do to this evidence would in no
7 way affect your findings, would they?

8 A. No, sir.

9 Q. Your conclusion is you found sperm in State's Exhibit
10 No. 3 and 4?

11 A. Yes, sir.

12 Q. But you can't identify who they came from?

13 A. No, sir.

14 MR. STRICKLAND: Thank you, ma'am. I have no
15 further questions.

16 FURTHER CROSS-EXAMINATION BY MR. ALBERTSON:

17 Q. In the report, the second report that you did dated
18 December 30, 1987, did you redo a smear from the panties and
19 napkin or did you have the old smear?

20 A. I had the old smear.

21 Q. Is that contained in what we have up there?

22 A. The vaginal smear?

23 Q. No, the smear or what you created from the panties and
24 the napkin.

25 A. Yes, it's inside the bag.

1 Q. Okay. That's marked with your initials on it?

2 A. Yes, it is. It has my initials, case number and item
3 number.

4 Q. So your investigation that you did in relation to the
5 samples that were sent to you concerning Mr. Dail was done
6 on evidence that you had already worked on back in October?

7 A. That's correct.

8 Q. You didn't do a new sample?

9 A. No, I did not.

10 MS. ALBERTSON: Nothing further.

11 MR. STRICKLAND: Nothing further.

12 THE COURT: Thank you, ma'am.

13 Call your next witness.

14 MR. STRICKLAND: I would like to approach the
15 bench with counsel.

16 (BENCH CONFERENCE)

17 MR. STRICKLAND: Your Honor, I have a stipulation
18 of fact I would like to mark as State's Exhibit No. 5. I
19 have another stipulation of fact to be marked as State's
20 Exhibit No. 6.

21 Your Honor, I have made copies of these
22 stipulations, which I will let you and counsel examine, and
23 I request the Bailiff pass these out to the jury.

24 THE COURT: See if she wants to look at them.

25 MR. STRICKLAND: Your Honor, before I call the

1 next witness I request that you instruct the jury as to the
2 effect of a stipulation of fact.

3 THE COURT: Ladies and gentlemen of the jury,
4 where facts are stipulated they are deemed established as
5 fully as if determined by verdict of a jury. It is a
6 judicial admission and binding preventing the party who
7 makes it from introducing evidence to dispute it and
8 relieving the other party from the necessity of proving
9 evidence to establish the admitted fact.

10 MR. STRICKLAND: I'd like to call the next
11 witness, Troy Hamlin.

12 D. T. HAMLIN, called as a witness, having first been duly
13 sworn, was examined and testified as follows on

14 DIRECT EXAMINATION BY MR. STRICKLAND:

15 Q. Will you state your name, please, and address?

16 A. Troy Hamlin, Raleigh, North Carolina.

17 Q. Mr. Hamlin, what is your occupation?

18 A. Special agent with the North Carolina State Bureau of
19 Investigation and assigned as a forensic chemist in the
20 trace evidence section of the crime laboratory. I
21 specialize in examination and comparison of hair and
22 physical match comparisons.

23 Q. What is your education and work background?

24 A. I graduated from the University of Central Florida in
25 Orlando, Florida, in December 1980 with a Bachelor of

1 Science degree in forensic science and minor in chemistry.

2 Prior to graduating from the university, I was
3 required to complete a six-month internship program. This
4 program was completed at the Charlotte Police Department
5 crime laboratory in Charlotte, North Carolina. I became
6 employed by the Bureau in January of 1981 and remained
7 employed until July of 1983, at which time I assumed a
8 similar position with the Florida Department of Law
9 Enforcement. I remained with that agency until December of
10 1984, at which time I returned to the Bureau and have been
11 working there since.

12 Q. Mr. Hamlin, what special type of training in hair
13 examinations and comparisons did you receive?

14 A. Well, while at the University of Central Florida I
15 completed classes that dealt with the examination and
16 comparison of physical evidence. Among one of these items
17 of evidence was hair.

18 While doing my intership I received training in
19 areas of physical evidence. Among one of these items was
20 hair. I completed a class in advanced forensic microscopy
21 which dealt with the examination and comparison of physical
22 evidence under a microscope, among one of these items was
23 hair.

24 While at the -- upon becoming employed by the
25 North Carolina State Bureau of Investigation, I received a

1 one-year training program that dealt exclusively with the
2 examination and comparison of hair and after completing
3 several written practical and oral examinations I was
4 allowed to assume case load in that area.

5 Q. Have you testified -- let me ask you this. Is the
6 majority of your work with the S.B.I. lab now dedicated
7 toward hair examination?

8 A. Yes, sir, at the present time and in the past
9 approximately 75 to 80 percent of my time has dealt with
10 hair examinations.

11 Q. Have you ever been qualified as an expert witness in any
12 courts in the State of North Carolina?

13 A. Yes, sir, North Carolina and Florida.

14 Q. Do you know approximately how many cases you've
15 testified as an expert hair examiner in?

16 A. I'd say approximately 80.

17 MR. STRICKLAND: I submit him as an expert in the
18 field of hair examination, Your Honor.

19 MS. ALBERTSON: No objection.

20 THE COURT: All right.

21 Q. Mr. Hamlin, I want to hand you what has previously been
22 marked as State's Exhibit Nos. 5 and 6, which purport to be
23 two stipulations of fact. If you would, just take a moment
24 and examine those, sir. I'll be asking you some questions
25 about them.

1 THE COURT: Well, now, we're not going into what
2 you've stipulated to. I just told the jury that establishes
3 the facts in that stipulation.

4 MR. STRICKLAND: I'm just asking him to explain
5 certain conclusions.

6 Could I approach a minute?

7 THE COURT: No. I just have to wait to see what
8 you ask.

9 Q. Have you examined those documents?

10 A. Yes, sir, I have.

11 Q. Let me call your attention -- first let me rephrase the
12 question.

13 Would you explain to the jury a little bit as
14 shortly as you can what the science of hair examination is,
15 how do you go about comparing hair?

16 A. In the laboratory we examine various items for the
17 presence of hair. After finding these items we look for
18 characteristics that are associated with the hair that vary
19 in the general population. We do this by examining those
20 hairs under a microscope.

21 If you could imagine this hair or this pencil as
22 representing hair as viewed under a microscope, large or
23 magnified with the eraser end of the pencil representing the
24 roots of the hair, the length and shaft of the pencil
25 representing the length and shaft of the hair and the tip

1 representing the tip of the hair, now, just as this pencil
2 has a thin outer layer of paint, so does the hair have a
3 thin outer layer. This outer layer is called the cuticle
4 and this consists of scales just as scales on a fish or
5 snake.

6 Now, these scales will vary from individual to
7 individual within a general population. An example of this
8 is how close and how far apart the scales are into the shaft
9 of the hair and how much damage is associated with the
10 scales themselves.

11 Moving to the center of the hair, which on the
12 pencil is represented by the wooden portion, in the hair
13 this is the cortex. In this exists pigment particles.
14 These vary in shape, size, in color and most importantly,
15 they vary in distribution just as the wood grain from pine
16 differs from the wood grain from oak so will the pigment
17 pattern differ from individual to individual.

18 In the middle of the hair, represented by the
19 lead portion on the pencil, in the hair this is called the
20 medulla. The medulla will vary from individual to
21 individual. It may run throughout the hair as it does here
22 as the pencil lead does or it can be absent altogether or it
23 can have places where it's absent, present as extends
24 through the length of the hair. This will vary from
25 individual to individual.

1 These are some of the characteristics we look for
2 when we examine hair under a microscope.

3 Q. In State's Exhibit No. 5, would you take a look at
4 that. Attachment A to that document is a laboratory
5 report. Is that your signature on that report?

6 A. Yes, sir, it is.

7 Q. And you performed this analysis?

8 A. Yes, sir, I did.

9 Q. And your conclusion of that is there was no Caucasian
10 hair as found in the items listed above, is that correct?

11 A. Items 1-E and 1-H being the hair from the victim's panty
12 and pubic hair combings from [REDACTED].

13 Q. Would you please take a look at State's Exhibit No. 6
14 and look at Exhibit A on that.

15 First, is that your signature at the bottom of
16 Exhibit A?

17 A. Yes, it is.

18 Q. Did you do this examination reflected by Exhibit A?

19 A. Yes, sir, I did.

20 Q. That's the conclusion reflected in that report?

21 A. Yes, sir, it is.

22 Q. Over on the second page of attachment A where it says
23 results of analysis, you stated:

24 Examination of Item 1 revealed the presence of
25 one Caucasian head hair. This hair was found to be

1 microscopically consistent with the head hair of Dwayne
2 Dail. Accordingly, this hair could have originated from
3 Dwayne Dail.

4 What do you mean when you use the term could have
5 originated from?

6 A. That this hair did in fact originate from Dwayne Dail or
7 if it did not, it would have had to originate from another
8 individual of the same race whose hairs contain the same
9 microscopic characteristics as that hair found in Item 1.

10 Q. What about color, how does that relate?

11 A. Color and pigmentation and cuticle all are -- in the
12 laboratory we use what is called a comparison microscope.
13 What this comparison microscope allows you to do is get a
14 side-by-side view of two hairs under the same lighting
15 conditions and under the same magnifications so that you
16 compare the characteristics of the cuticle, cortex and
17 medulla.

18 In this instance, I removed hair from Item 1,
19 compared it with the head hair of Dwayne Dail and found
20 those hairs to be microscopically consistent.

21 Q. In the second paragraph of that same document there
22 right below it you said:

23 Further examination of Item #1 reveals presence
24 of two Caucasian pubic hairs that were microscopically
25 different than the public hairs of Dwayne Dail.

1 Is that your conclusion on this report?

2 A. Yes, sir, it is.

3 Q. Now, this report was based upon an examination of
4 vacuumed debris collected on September 4, 1987?

5 A. Yes.

6 Q. What is the significance, if you have an opinion, to the
7 credibility of vacuumed debris, vacuumed out of a rug?

8 MS. ALBERTSON: Objection.

9 THE COURT: Objection sustained.

10 Q. I'll rephrase that.

11 What type of things are you likely to get when
12 you vacuum a rug?

13 MS. ALBERTSON: Objection.

14 THE COURT: Objection sustained.

15 Q. Do hair particles -- state whether or not hair particles
16 or different kinds of hairs stay in rugs over long periods
17 of time.

18 MS. ALBERTSON: Objection.

19 THE COURT: Overruled.

20 A. It has been my experience in examining especially
21 vacuumings that vacuuming you pick up numerous hairs from
22 rug and carpet materials. Among these, for this particular
23 example, there was 40 negroid hairs found in this particular
24 item and also three Caucasian hairs and you cannot say how
25 long the hairs had been deposited in the carpet.

1 Q. You did say there were 40 negroid hairs?

2 A. Yes, negroid being classification we give hairs from
3 individuals of the black race, Caucasian being the
4 categorization we give from hair being from the white race
5 and also another categorization, Mongoloid, that we gave to
6 hairs originated from American Indians, Eskimoes and
7 Asiatics.

8 Q. Are you able to estimate what length of time it would be
9 possible for hairs to, say, remain in a rug?

10 MS. ALBERTSON: Objection.

11 THE COURT: Sustained.

12 MR. STRICKLAND: I have no further questions.

13 CROSS-EXAMINATION BY MS. ALBERTSON:

14 Q. Mr. Hamlin, the 40 negroid --

15 A. Yes.

16 Q. -- hairs found, did you test those, each of those hairs
17 against Ms. [REDACTED]?

18 A. No, ma'am, I did not.

19 Q. You were only looking for Caucasian hair?

20 A. Caucasian hairs in that item, yes, ma'am.

21 Q. So you didn't compare to see if there were any negroid
22 hairs that didn't match Ms. [REDACTED]?

23 A. No, ma'am. The only thing we were involved in a
24 comparison between was the suspect and the submitted items.
25 In this particular case, the suspect was being indicated as

1 being white and therefore, I was looking for Caucasian
2 hairs.

3 Q. In your first report that you did dated October 20,
4 1987, I believe State's Exhibit No. 5, you stated that the
5 examination of items 1-E and 1-H did not reveal any
6 Caucasian hairs?

7 A. That's correct.

8 Q. And in that case, you didn't look to see if there were
9 any negroid hairs there?

10 A. Yes, I did look.

11 Q. And there were none?

12 A. There were some, yes, ma'am.

13 Q. That did not belong to Ms. [REDACTED]?

14 A. It was not a comparison done on that item because the
15 thing I was asked to do is compare the hairs found with
16 Dwayne Dail, which were Caucasian hairs so therefore, I was
17 looking for Caucasian hairs.

18 Q. Now, as far as tracing what actually occurred in this
19 case, you received the hairs from the victim and the hairs
20 from Mr. Dail and you did this first comparison, which is
21 State's Exhibit No. 5?

22 A. That's correct.

23 Q. And then you got the evidence again and you prepared a
24 second report, isn't that true?

25 A. That's correct.

1 Q. And the second report is not the same as the report of
2 State's Exhibit No. 6, isn't that true?

3 A. That's correct, State's Exhibit No. 6 is an amended
4 report.

5 Q. Pardon me?

6 A. State's Exhibit No. 6 is an amended report.

7 Q. So there was actually a report in there in the middle
8 that is different from State's Exhibit No. 6?

9 A. That's correct.

10 Q. And that report does not make any mention of the fact
11 that the examination revealed presence of two Caucasian
12 pubic hairs that were microscopically different than the
13 pubic hair of Dwayne Dail, does it?

14 A. That's correct.

15 Q. I ask you to look at Defendant's Exhibit No. 1. Do you
16 recognize that?

17 A. Yes.

18 Q. Do you have the original of that document?

19 A. Yes, I do.

20 MS. ALBERTSON: Approach the witness, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 You just looked at a copy of it.

24 MS. ALBERTSON: Yes, sir. He had the original.

25 Q. Is your signature on the original of that document?

1 A. Yes, it is.

2 Q. On Defendant's Exhibit No. 1 is your signature on it?

3 A. No, it is not.

4 Q. It's typed, your name is typed on that document?

5 A. That's correct.

6 Q. If you would look at the second page of that document,
7 sir, that second page is the same as State's Exhibit No. 6
8 except you deleted the portion concerning the presence of
9 two Caucasian pubic hairs?

10 A. That's true.

11 Q. Only after being contacted by someone on behalf of the
12 defendant was it that you amended your report, isn't that
13 true?

14 A. No, after being contacted by the -- by Mr. Strickland
15 and at his request I amended the report. The reason the
16 report did not indicate those, what we term foreign hairs,
17 is because especially on vacuumings, based on my experience
18 in eight years of performing hair --

19 MS. ALBERTSON: Objection.

20 THE COURT: Let him explain the answer. You
21 asked the question.

22 A. Based on eight years in performing hair examinations,
23 especially vacuumings from floor areas, we usually find
24 hairs that are foreign to the victim and any submitted
25 standards. Therefore, as a normal procedure, we do not

1 include any indication of these foreign hairs.

2 Now, at the request of Mr. Strickland I amended
3 the report to indicate those two hairs that were found to be
4 different than those of Dwayne Dail.

5 MS. ALBERTSON: I have no further questions.

6 MR. STRICKLAND: I have no further questions.

7 THE COURT: You may come down.

8 MR. STRICKLAND: Your Honor, I would like to
9 request that Ms. Milks and Mr. Hamlin be excused.

10 MS. ALBERTSON: I have no objection.

11 THE COURT: They may be excused.

12 MR. STRICKLAND: Your Honor, the State would call
13 as its next witness Ms. Rosa Dail.

14 ROSA DAIL, called as a witness, having first been duly
15 sworn, was examined and testified as follows on

16 DIRECT EXAMINATION BY MR. STRICKLAND:

17 THE COURT: Do you object to him calling her?

18 MS. ALBERTSON: No, Your Honor.

19 Q. Ma'am, would you state your name and address, please.

20 A. Yes, I'm Rosa Dail, Route 11, Box 475, Goldsboro.

21 Q. Mrs. Dail, are you the mother of the defendant, Dwayne
22 Dail?

23 A. Yes, I am.

24 Q. Ma'am, could you tell me what his birthday is and when
25 he was born?

1 A. July 22 -- no, July 18, 1968.

2 MR. STRICKLAND: Thank you, ma'am. I have no
3 further questions.

4 MS. ALBERTSON: No questions.

5 THE COURT: Thank you.

6 MR. STRICKLAND: If I could approach the bench
7 with counsel.

8 (BENCH CONFERENCE)

9 THE COURT: Take the jury out for a minute.

10 (JURY RETIRES 3:50 P.M.)

11 THE COURT: What is it you want to offer into
12 evidence?

13 MR. STRICKLAND: Your Honor, I would like to
14 offer into evidence first for substantive purposes not only
15 for illustrative purposes, State's Exhibit No. 3, which is
16 the -- excuse me, State's Exhibit No. 1, which is the S.B.I.
17 rape kit. State's Exhibit No. 3, which is the bag --

18 THE COURT: That's just the box.

19 MR. STRICKLAND: That's the box, right, the
20 entire kit or the box, right.

21 State's Exhibit No. 3, which is the bag
22 containing sanitary napkin and panties, and State's Exhibit
23 No. 4, which is the two vaginal smears.

24 Your Honor, anticipating some of the objections
25 by the defendant --

1 She also -- the strongest evidence in this case,
2 she stands up on that stand, or sits up there on that stand
3 this week and says he's the one. She identifies him here in
4 Court.

5 Now, defense will make a big deal about well, she
6 couldn't see him all that well, the light was not that good,
7 she started for the door and then he closed the door.
8 Therefore, the light wasn't all that good. He got very,
9 very close to her. She testified there was light outside,
10 it was not totally dark and and it's obvious the window was
11 open as he came through. She knew the man that raped her
12 and she picked him out, she picked him out, pointed to him
13 to her mother on the 16th of October and picked him out in
14 this courtroom a couple of days ago.

15 Barbara Best, her mother, testified that she saw
16 the defendant on the 25th of September riding around in a
17 van looking at the house. She identified him. Again, she
18 corroborates [REDACTED] story when they both saw him on the
19 16th of October around the apartment section that Tomeshia
20 froze. And she identified him to her.

21 Corporal Patsy Gooding testified that the
22 defendant (sic), when she saw her that day, before she could
23 finish talking to Sgt. Peters, started crying and she was
24 also crying going on to the hospital. Dr. Bateman testified
25 for the State, could not find any signs of forcible trauma

1 but did not rule it out. You recall that [REDACTED] testified
2 that he either put it in halfway or part way or what have
3 you. Lucy Milks, the State Bureau of Investigation,
4 certified serologist, testified that in examining the
5 vaginal smears -- and I don't know if you got that technical
6 point, ladies and gentlemen of the jury, but the smears are
7 made from swabs, swabbing the vagina -- that she found also
8 in examining her panties and sanitary napkin, that she found
9 the presence of spermatozoa, which indicates possible
10 semen. That certainly supports that this child had some
11 sexual activity that night. She could not pin it down to
12 the defendant.

13 Troy Hamlin, hair expert from the S.B.I. You
14 recall the stipulations of fact in that case.

15 This is evidence which you're going to have to
16 weigh and decide what to do with it because the State
17 candidly admits it's in conflict but also it is consistent.
18 First thing, let's consider what evidence we're talking
19 about, and that's the vacuum sweepings from the rug. The
20 State concedes that vacuum sweepings from a rug, hair
21 samples found from that, certainly would not be as good if
22 they were found on the bed or in her panties or pubic hair
23 combings or anything like that. Rugs, I think [REDACTED]
24 testified the rug had been there about four years, she
25 bought it from someone else and I think Troy Hamlin

1 testified there was 43 hairs in there, 40 negroid and three
2 white, but he also said -- and his conclusion and the
3 defense and the State have both stipulated, we both agreed
4 that's a fact, to place it in front of the jury for your
5 consideration for the weight you want to attach to this
6 evidence. That evidence was that those vacuum sweepings
7 contained head hairs that were consistent with the head
8 hairs of Dwayne Dail.

9 Now, you heard the expert testify. Hair samples
10 are not -- certainly not like fingerprints, they are not
11 that exact, but it is some evidence for you to consider in
12 weighing this entire case. It's circumstantial evidence
13 that should not likely be discarded. He also found there
14 were pubic hairs in the sweepings that were inconsistent
15 with that of Dwayne Dail. Where those pubic hairs came
16 from, State certainly doesn't intend that it knows. But I
17 want you to consider the source of that hair thing, that
18 from the rug, and attach what significance that you want to
19 with that.

20 In conclusion, what we have in this case is the
21 classic elements that the State contends makes up a strong
22 rape case. We have allegations of first degree rape, sexual
23 offense, burglary, lewd and lascivious acts.

24 MS. ALBERTSON: Objection.

25 MR. STRICKLAND: We had that allegation made on

1 the stand.

2 We also have another classic element, that is --
3 State contends, that makes a strong case. We have an
4 immediate fresh complaint. This is not one of these cases
5 where this is a date sort of thing and someone comes up and
6 says oh, six months ago he raped me. It's not that kind of
7 case. She immediately ran to her mother crying telling her
8 the story of what happened. Why would she make it up?
9 That's the main thing. Why on earth would she make it up?

10 You know, I don't know what the defense will
11 argue, I have no way to know, never know what their case is
12 going to be, I don't know what they will contend but even
13 they will contend well, maybe there was some sex going on in
14 there but it wasn't with the defendant, it was with some
15 boyfriend and so forth. Well, if that be the case, why
16 would she just not let him keep on going out the window?
17 She sure would not have gone yelling to her mother, "I've
18 been raped!" That wouldn't make any sense at all. She would
19 have just gone back to sleep and been quiet. We have a
20 fresh complaint to her mother, to Officer Peters, to
21 Corporal Gooding, to the doctor, to the nurse, and Sgt.
22 Simmons. She told immediately after it happened.

23 We also have another element that I think makes
24 this a strong case in that we have -- we have eyewitness
25 identification which I pointed out. She has picked him out

1 in this courtroom and said that's the man who did it. We
2 had another prior eyewitness identification on the 16th of
3 October, 1987, as I argued, which was seeing him on the
4 street, which I would say is much stronger than the police
5 line-up type of thing.

6 We have not the strongest scientific evidence in
7 the world, we would concede, but we do have some scientific
8 evidence supporting her story that she didn't make that up.
9 We have the findings of the spermatozoa which indicates
10 semen on her panties, sanitary napkin and vaginal slides.
11 That's some evidence of sexual activity and we do have
12 evidence that a head hair similar to that of Dwayne Dail was
13 found in her bedroom.

14 We contend, ladies and gentlemen -- look at this
15 case as a whole. Think about the reasons for why people say
16 what they say. The Judge will instruct you on how you
17 should consider the testimony of witnesses and how you
18 should evaluate whether they be believable or not
19 believable. This is a fairly incredible story that this
20 young lady tells and I use the term incredible by not
21 meaning preposterous. It is a strange kind of story that
22 the State would contend if it didn't happen she would have
23 never said it. This is not a situation of boyfriends-
24 girlfriends kind of thing, breaking up or all that sort of
25 ramification. She did not know Dwayne Dail, she has no

1 reason, no reason whatsoever to come in this courtroom to
2 tell a lie through all these people she's talked to, to get
3 up on the stand to face vigorous cross-examination from Ms.
4 Albertson. What possible earthly reason would she have to
5 put herself through all this grief if she was not raped, and
6 why would she identify the defendant out there on October
7 16th and why would she identify him in the courtroom today
8 if it didn't happen and he's not the man?

9 The defendant has a lot of reasons why he may not
10 want to tell the exact truth. Life in prison or possibility
11 of life in prison could possibly make liars of a lot of
12 people who normally tell the truth.

13 I sympathize with him. I sympathize with his
14 family members and you should evaluate their testimony
15 considering where it's coming from. I wouldn't -- strike
16 that. When you think about whose telling the truth and who
17 is lying, and that's what the case gets down to after all is
18 said and done, and after all the elements, after all the
19 scientific evidence we presented the case is very, very
20 simple. Do you believe her, and ask yourself why she'd be
21 lying about it, or you believe the defendant and you ask
22 yourself why he'd lying about it. Thank you.

23 MS. ALBERTSON: (11:13 A.M.) May it please the
24 Court, counsel, ladies and gentlemen of the jury:

25 Mr. Dail, as you've been told, has been charged

1 screen down on the ground, not hooked up to the window.
2 Cut, he says, on the ground. He sees the chair outside, he
3 sees the room looking like somebody had slept in it. He
4 says that he took his fingerprint kit with him. Do we hear
5 anything about any fingerprints? Do we hear anything about
6 any footprints?

7 Ms. [REDACTED] testimony is this guy came in in
8 shorts and that's it, no shirt, no shoes, no nothing, no
9 gloves. If he had to come in a window, push a screen
10 around, come in, how is he going to climb up there? Isn't
11 he going to put his feet somewhere in that area? You don't
12 hear any of that. Leaves by the same force. Do we have any
13 of this other evidence to tie into this situation? We
14 don't. What do we have? Other than what [REDACTED]
15 [REDACTED] tells you about what happens that night, we have
16 some hair samples and some semen samples.

17 First we get the semen. That comes from Dr.
18 Bateman, which he takes from Ms. [REDACTED]. We also take
19 her pubic hair combings and her head hair pluckings at that
20 time. All of that is sent to the S.B.I. lab, it's
21 evaluated, comes back, they are semen. Can't do anything
22 with anything else until we have a suspect. Fine.

23 Then we have some vacuums. The State didn't see
24 fit to tell you how all the vacuumings were gotten, just
25 that they are there, mysteriously, we got some vacuumings.

1 They don't want to tell you how they got them or something
2 or else they would have. In any event, you don't know how
3 they got them but they got these vacuumings and they go to
4 the S.B.I. lab and they don't do anything with them until
5 sometime later.

6 Now, don't hear about anything else, we don't
7 know who did those or anything else. September 25 comes
8 along. Ms. [REDACTED], "My daughter has been raped. I got to get
9 out there and find out who did this to my child. Police
10 aren't helping me," I believe that's her testimony, didn't
11 think they were following through on the investigation. "I
12 have to get around town and see what I can find out."
13 Standing in her house and she says she sees the defendant,
14 Mr. Dail, ride by in his van by himself and she thinks he's
15 looking towards her house. The defendant says ride through
16 Jefferson Park all the time. Yeah, I would ride in front of
17 her place. Based on that, this woman goes out, sends
18 somebody around to get a license plate number and doesn't
19 get it at that time. Two days later sees Mr. Dail again and
20 gets a license plate number. That sets the pattern, ladies
21 and gentlemen, she's picked somebody out. The momma, not
22 the victim, has picked out a man that she thinks meets the
23 description, which we would submit absolutely did not. But
24 in any event, she picks out this man, she decides well,
25 that's the one. I've got to get him, I've got to find out

1 what is going on.

2 So she proceeds along. She calls the police and
3 tells them about the license plate and they don't get any
4 results from that. October 16 happens, ladies and
5 gentlemen, she's at her mother's house, Ms. [REDACTED], [REDACTED]
6 [REDACTED] are at Ms. [REDACTED] mother's house. Ms. [REDACTED] sees
7 Dwayne Dail come up to Jefferson Park. She sees Mr. Dail go
8 over into the parking lot, which is somewhere adjacent to
9 the Jefferson Park area but where you can see clearly
10 visible standing with a group of guys. There is the one I
11 saw riding by the place. Told my daughter about it. She
12 tells you she doesn't tell her daughter anything when they
13 go out to walk back home. Ladies and gentlemen, is that
14 believable when this woman is out there looking for somebody
15 who committed this offense? She already told her daughter
16 there was somebody who rode by in a van and she admits to
17 you from the witness stand yeah, I saw him before, I knew he
18 was out there that day so we go walking right up there. My
19 daughter freezes, my daughter doesn't say momma, there is
20 the guy. She just stops. Momma says is that the guy, and
21 she says yes. She doesn't say there he is, she never points
22 to him at all. She says he's wearing jeans and a T-shirt.
23 Six people at least out there. According to Mr. Dail,
24 everybody in jeans and at least one other person in a
25 T-shirt, if not more.

1 Based on that alone Mrs. [REDACTED] goes and calls the
2 police. She tells you she doesn't know who Dwayne Dail is.
3 She gave them a license number over the phone. And from
4 that point the ball drops, ladies and gentlemen. We know
5 absolutely nothing about how the police for the Goldsboro
6 Police Department get to Mr. Dail from that point. She
7 gives them a license plate number of a vehicle and that's
8 it. You don't hear anything about [REDACTED]
9 seeing any pictures of Mr. Dail, going down to see any
10 line-ups which Mr. Strickland has talked to you about. Gee,
11 that's not as good anyway because she would be all prepped
12 to go down and see it but she was prepped before, ladies and
13 gentlemen. But anyway, she -- you don't know.

14 Without that information, ladies and gentlemen,
15 the fact that this girl took the witness stand and pointed
16 to Mr. Dail has absolutely nothing to do with a conviction
17 in this case. She is pointing to the person sitting there in
18 the defendant's chair, the person who momma has picked out,
19 not the person she picked out. What is she supposed to do?
20 Here's a 14-year-old girl, told her momma something happened
21 but she better hold onto it. That's why I tell you, ladies
22 and gentlemen, I don't think you have to get to the elements
23 of the crime, that you have to decide whether or not
24 something happened in that room or just happened in that
25 room. Bottom line is she didn't ID him and she can't ID

1 him. She took that witness stand and said she knew who it
2 was but only after having been told by her mother and having
3 this guy picked out by her mother and her mother was upset.
4 Police hadn't helped her out, had to call the girl's daddy
5 to help some.

6 I submit to you that [REDACTED] didn't
7 want to be in her mother's path had she found out that
8 something wasn't just right.

9 Let's think just a minute longer about these hair
10 samples. The hair samples that you saw a report on, the
11 first report that was done was when they submitted only the
12 pubic combings of [REDACTED], the pubic hairs that
13 were plucked and the head hairs that were plucked and the
14 pubic hair pluckings of Mr. Dail and the head hair pluckings
15 of Mr. Dail. When they were submitted to the S.B.I. lab,
16 those two items along with the rape kit which would show the
17 sanitary napkin, there were no matches, there were no
18 Caucasian hairs found at all on [REDACTED], none,
19 and the pubic hair combings that were sent to the S.B.I.
20 lab. There were other negroid hairs found there, ladies and
21 gentlemen, but they didn't test those because they are
22 looking a white guy.

23 The State is here with one purpose in mind. Not
24 to really tell you what the facts are in this case but to
25 tell you only that which is consistent with guilt for Dwayne

1 facts are in cases, ladies and gentlemen. That's why they
2 call on juries to assist. But the facts that the State
3 has -- that the State of North Carolina has presented to you
4 today are not sufficient to convict Dwayne Dail of a single
5 thing. They don't show anything that is consistent with the
6 guilt of Dwayne Dail. The sperm came or is something they
7 couldn't match. They tried. Mr. Dail had the blood test
8 done, he had the saliva samples done. None of that could be
9 matched because of being a nonsecretor. All of that was
10 done.

11 Dwayne Dail went down when he gets the note from
12 Ted Simmons, come on down to see me. He goes right down
13 there. He doesn't know what they are calling about. He
14 gets down there and the guy starts asking questions about a
15 rape that occurred and he had been in Jefferson Park, he had
16 heard that a rape occurred and based on that he tells him I
17 don't know nothing about September 4 special at that time.
18 You're cold, coming in there, you know, six weeks after the
19 event happened, what you were doing on that given day. From
20 that day Mr. Dail then receives an order from the Court to
21 go and have these blood groups -- this blood test and hair
22 sampling done. He gets a court-appointed lawyer and we go
23 and have these tests done. The report comes back, first
24 report, ladies and gentlemen, can't match any of the blood
25 to the semen because they are nonsecretors and we can't

1 match any hair. There are no Caucasian hairs found on
2 [REDACTED] period. That's in November, December.
3 Don't hear nothing. It's over with. Mr. Dail goes on about
4 his life.

5 Then in May of 1988, Mr. Dail gets home from work
6 and hears from some of his family members whoops, it's in
7 the newspaper that you've been indicted for criminal
8 offenses such as rape, indecent -- rape, first degree sex
9 offense and other various charges. Mr. Dail says whoa, this
10 has to be a misprint. What are they talking about? Does he
11 leave town? Does he get out of Dodge? No. He goes right
12 down to the police department. What is this, what is going
13 on? Does that sound like somebody guilty of an offense?
14 Absolutely not! That sounds like somebody who doesn't have
15 a single thing to hide, goes down to find out why in the
16 world they print something like that in the newspaper about
17 him.

18 When he gets there no one knows anything about
19 it. He goes around to the Magistrate's office, goes to the
20 Sheriff's Department. He doesn't go one stop and stops. He
21 wants to find out what is going on. He finally finds out
22 yes, they've charged me and he gets locked up, stays in jail
23 four days, he tells you, before he can get out. Since that
24 time he's been out on bond awaiting trial in this matter.

25 When he was sitting there those four days in the

1 going to have the opportunity to basically try to punch
2 holes in what I've said to you, ladies and gentlemen. But
3 I'd ask you that as you listen to what he says think about
4 what I would say in response to what he said to you. I
5 think if you do that, you will see that Dwayne Dail is not
6 guilty of any of these charges and that you'll render your
7 verdict accordingly because to do otherwise would be to put
8 this man away for mandatory life sentence on something
9 wherein this girl cannot even identify this man and has not
10 prior to sitting in this courtroom, actually identified this
11 man. Never pointed him out to anyone ever.

12 We're satisfied you'll render a verdict of not
13 guilty on all charges and I thank you very much for your
14 attentiveness in this whole trial and the defendant
15 appreciates it. Thank you.

16 MR. STRICKLAND (11:45 A.M.): Ladies and
17 gentlemen, I will be very brief in my closing remarks. I
18 tried to cover most of the State's argument in my opening
19 argument and as Ms. Albertson predicted, I will attempt to
20 point out a few things she has mentioned to you and give the
21 State's version of it.

22 First thing I really need to set at rest is her
23 summarizing of what the sentences are in this case. As I
24 told you from the very beginning, everybody has certain
25 responsibilities. I had responsibility to prosecute this

1 happened. You also need to weigh the demeanor on the stand
2 of the defendant. The State would characterize his
3 appearance up there for someone facing all he's facing as
4 fairly cavalier about the whole thing. Almost laughing
5 about some parts of it. Consider his demeanor as you
6 consider the demeanor of the victim. You don't know how
7 you'd react. Actually the demeanor of either one of them
8 may not be consistent with what they are really like. I
9 still contend that this is a very stressful situation for
10 both of them. You just have to decide how they act when
11 they get on the stand.

12 The defendant has come up in this case with what
13 we commonly call a classic alibi defense. Alibi defense, if
14 established and if convincing, is the absolute best defense
15 anyone can ever come up with because what he's saying is, in
16 effect, I don't care about any of this stuff or what
17 [REDACTED] says, she could have been raped, she
18 could have had sexual offenses committed upon her, her house
19 could be burglarized, I don't care about any of that what
20 the State has establish, I don't care about hair samples,
21 semen or any of this stuff. It doesn't make any difference
22 because I wasn't there and I could not have done it. It's a
23 very, very effective defense if it's presented properly.
24 The problem with alibi defense in this case, what you
25 frequently run into is when does it arise? At what point is