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1 V I R G I N I A:

2 IN THE CIRCUIT COURT OF THE CITY OF

3 NORFOLK

4
5 COMMONWEALTH OF VIRGINIA,

6 vs.

7 WILLIE DAVIDSON,

8 Defendant.

9
10
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12
13
14 DATE: May 27, 1981

15 BEFORE: The Honorable Alfred W.
16 Whitehurst

17
18
19
20 APPEARANCES:

21 ROBERT C. SLAUGHTER, III,
22 Assistant Commonwealth's Attorney,
23 Appearing on behalf of the
Commonwealth.

24 CHARLES V. BASHARA
25 Attorney for the Defendant.

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

CIRCUIT COURT
9-4-81
L. M. Lewis

FILMED

C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, to wit:

I, Lois Baker McLellan, RPR, do hereby
certify that the foregoing pages are a true and
correct transcript of my Stenotype notes of the
proceedings had at the time and place in the
caption mentioned.

This 3rd day of September,
1981.

Lois Baker McLellan

Court Reporter

1 MARY JANE BURTON,
2 called as a witness, having been
3 first duly sworn, was examined and
4 testified as follows:
5

6 DIRECT EXAMINATION

7
8 BY MR. SLAUGHTER:

9 Q. State your full name and
10 occupation, please.

11 A. Mary Jane Burton. I'm a
12 forensic scientist.

13 MR. SLAUGHTER: Mr. Bashara has
14 kindly agreed to stipulate she's an expert in
15 the field of forensic science.

16 MR. BASHARA: Absolutely. I have
17 checked her qualifications and find her so
18 endowed.

19 THE COURT: We'll let the record
20 so reflect.

21
22 BY MR. SLAUGHTER:

23 Q. Do you do examinations regarding
24 hair identification?

25 A. Yes, sir. Hair identification

1 and comparisons.

2 Q. Could you tell us a little bit
3 about the nature of these hair comparisons?

4 A. Well, first of all, hairs do
5 vary from one person to another. There are
6 individual characteristics within a hair which
7 we view microscopically. First we would view
8 the known sample of hair from any individuals
9 involved to find the individual characteristics
10 within those hairs, and then we use a special
11 microscope, comparison microscope which is two
12 separate microscopes joined with a bridge so I
13 can view two hairs at one time in the same
14 field.

15 After thoroughly familiarizing
16 myself with each set of known hair and the
17 characteristics in the hair, I would compare an
18 unknown hair with each of the known samples to
19 find out if I see any characteristics in the
20 unknown hair represented in the known hair.
21 Some of the individual characteristics I'm
22 speaking about -- first, let me describe a hair.

23 A hair on the outside has a
24 cuticle. All hair has a cuticle. This takes
25 the form of scales. I have an illustration

1 that might help, if you would like to use it.

2 Q. Well -- well, that's all right.

3 We don't have a jury here today. Judge, do you
4 want to see that?

5 THE COURT: Of course, if she
6 has it handy.

7 MR. BASHARA: It might enlighten
8 us all.

9 THE COURT: And cuticle, what
10 would that word mean?

11 THE WITNESS: Cuticle is a
12 cutaneous type tissue. Like we have cuticle
13 around our fingernails. Sometimes it's a, it's
14 a type tissue we can look through. We mount
15 these hairs in a medium with the same
16 refractive index so we can look through the
17 cuticle into the inner portion of the hair.
18 This is what the hair looks like. The cuticle
19 takes the form of scales. These vary in shape
20 and size and thickness and whether there is
21 pigmentation. Right inside the scales in this
22 part we call the cortex are many other
23 characteristics. If the hair has color, it has
24 pigment granules you see represented here. On
25 the cross section, they look like dots. On the

1 longitudinal section, they look like stripes.

2 The shape of these, the size and their
3 distribution across the diameter are individual
4 characteristics that vary from one person to
5 another.

6 In addition to the pigment
7 granules, sometimes we see empty feeding tubes
8 in the cortex. When your hair is growing,
9 there are tubes that feed it and cause it to
10 grow. These die off. We see remnants sometimes
11 in the cortex. This is an individual
12 characteristic whether they're present.

13 In the center is the medulla. A
14 bunch of air sacs. The size and shapes and
15 distribution are all individual characteristics.
16 In this picture, the medulla looks regular and
17 even but often we see it varies in diameter and
18 sometimes we see pieces down the hair shaft.
19 These are individual characteristics. All hair
20 has these characteristics. At least hair with
21 color. But they vary in the various ways I
22 mentioned.

23 THE COURT: Yes, ma'am.

1 BY MR. SLAUGHTER:

2 Q. When you examine any two hairs,
3 can you ever say for sure they came from the
4 same person?

5 A. No, sir, I cannot.

6 Q. What would be the greatest
7 degree of certainty you can arrive at in
8 deciding whether they came from the same person?

9 A. I could say they could have
10 originated from the same person. The reason I
11 would never be able to say they did come from
12 the same person, I would have to compare that
13 unknown hair with hair from everyone else, at
14 least within that race, and with a good
15 statistical base and that would be an
16 impossible task.

17 Q. In your work, do you analyze
18 body fluids?

19 A. Yes, sir, I do.

20 Q. Could you tell us a little bit
21 about the nature of the work you do with body
22 fluids and the significance that analysis might
23 have in a rape case?

24 A. First let me explain -- I'm sure
25 you're familiar with blood typing. You may

1 know what your blood type is. It could be A, B,
2 AB or O. If you are a secretor, you will have
3 your same A, B, O blood group factors in all
4 your body secretions. These would be vaginal
5 fluid, saliva, mucous, tears, any body
6 secretion would have these A, B, O factors if
7 you're a secretor.

8 If you're a non-secretor, none
9 of your body secretions would have your A, B, O
10 factors. If you're a secretor, I can determine
11 these factors the same as we might determine
12 your blood type. Where we have a combination
13 of secretions, where intercourse has taken
14 place we may have a combination of seminal and
15 vaginal, or seminal and saliva or any other
16 secretion. We may have a combination of the
17 A, B, O factors from the two people involved if
18 they're both secretors. Or if only one is a
19 secretor, we would determine just the one
20 person's A, B, O factors.

21 Q. A woman's vaginal fluid, would
22 that be the same type, the saliva and vaginal
23 fluid?

24 A. If she's a secretor, all the
25 secretions would have the A, B, O factors.

1 Q. Did you receive swabs from a
2 case where the victim is Thompson and the
3 suspect is Davidson?

4 A. Yes, sir. I received a PERK kit
5 from the victim, bed sheets, pillow cases, bed
6 clothing, tissues used by suspect and cigarette
7 butts. In another submission, I received a
8 physical evidence recovery kit for the suspect,
9 and in another submission I received additional
10 public hairs and saliva samples from the victim.
11 Then in an additional submission, I received
12 saturated saliva swabs from the suspect.

13 Q. Did you conduct any tests having
14 to do with the physical evidence recovery kit
15 from the victim?

16 A. Yes.

17 Q. First, how did you receive that?
18 How was it packaged and whatever?

19 A. It was in a brown manila
20 envelope and sealed and identified.

21 Q. What test did you perform with
22 regard to the physical evidence recovery kit
23 from the victim?

24 A. Only thing contained was a towel
25 with a comb and a bag with two pubic hairs in

1 it. This towel and comb also had many blood
2 crusts dried on it, and in the towel I found
3 three hair fragments all consistent with Negro
4 hair.

5 Q. Did you conduct any analysis on
6 these hairs, comparisons of anything?

7 A. Yes, I did.

8 Q. What were those?

9 A. I compared these three hairs
10 with both the known pubic hairs from the victim
11 and the known pubic hairs from the suspect and
12 found that two of the hairs were consistent
13 with and could have originated from the victim.
14 The third hair was consistent with and could
15 have originated from the pubic area of the
16 suspect.

17 Q. The hairs in that PERK kit from
18 the victim was hair from the pubic combings?

19 A. That is correct.

20 Q. Where did you get the hair you
21 compared this with?

22 A. In the original PERK kit from
23 the victim, I had two known pubic hairs in a
24 bag and then I received an additional -- two is
25 not enough. I like to have more variety, so I

1 received an additional pubic hair sample from
2 the victim.

3 Q. Did you at some point receive a
4 known hair from the suspect? Is that included
5 in the items you listed earlier?

6 A. Yes, that is included in the
7 PERK kit from the suspect.

8 Q. What was the result of the, I'm
9 sorry. You said one hair consistent with pubic
10 hair samples from the suspect.

11 MR. BASHARA: Objection. That
12 is in the PERK kit.

13 A. From the victim. That is the
14 combings from the victim.

15 MR. BASHARA: Combings from the
16 victim and suspect?

17 A. No, I had no combings from the
18 suspect. If I did, I didn't use them because
19 it was much later when I got them. The three
20 hairs I didn't know where they came from were
21 in the combings taken by the doctor from the
22 victim's pubic area. Two were consistent with
23 the victim's own pubic hairs and one was
24 consistent with the suspect's pubic hair.

25 MR. BASHARA: That is item one?



1 Q. Did you receive swabs from a
2 case where the victim is Thompson and the
3 suspect is Davidson?

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20 hairs I didn't know where they came from were
21 in the combings taken by the doctor from the
22 victim's pubic area. Two were consistent with
23 the victim's own pubic hairs and one was
24 consistent with the suspect's pubic hair.

25 MR. BASHARA: That is item one?

1 THE WITNESS: Yes.

2
3 BY MR. SLAUGHTER:

4 Q. Can you say with a greater
5 degree of certainty that it's consistent as to
6 whether it came from the same person?

7 A. No, sir.

8 MR. SLAUGHTER: I think we ought
9 to mark that.

10 MR. BASHARA: Yes, sir. I think
11 the Commonwealth attorney and defense counsel
12 are reading the same thing and getting
13 something different.

14 THE COURT: This would be C-1.
15 I'll mark it C-1 and receive as such. It's the
16 supplemental report.

17
18 BY MR. SLAUGHTER:

19 Q. Let's turn to something else.
20 The two tissues. Item five. Mrs. Burton, did
21 you conduct examinations with regard to those
22 tissues?

23 A. Yes, I did. Initially I
24 examined them for the presence of seminal fluid
25 and identified spermatozoa in two tissues.

1 There were four tissues submitted. I found no
2 evidence of seminal fluid in the other two.

3 Later when I received saliva samples from the
4 victim and suspect, I determined the secretion
5 type of the stains and the secretion type of
6 both the victim and suspect through their
7 saliva.

8 I found that the victim had
9 type O secretion and that the suspect was a
10 non-secretor, which meant that none of the
11 blood group factors, whatever they would be,
12 would be found in his body secretions. I
13 identified spermatozoa on the tissues. If the
14 tissues were used to wipe either, if they were
15 used by say the defendant in wiping himself
16 after any type intercourse, I would expect a
17 combination of secretions to be present on the
18 tissues.

19 If it were from a vaginal
20 intercourse, I would expect vaginal secretions
21 and seminal fluid. If it were from oral sodomy,
22 I would expect saliva and seminal fluid. If it
23 were from anal intercourse, I would expect anal
24 fluid and seminal fluid or if it were from all
25 three, there might be a combination of all four

1 secretions.

2 The only secretion I can
3 identify with scientific certainty is seminal
4 fluid because of the presence of spermatozoa.
5 I can identify blood group factors agree
6 present. In this case, I was able to determine
7 that the secretions are type O and that they
8 did contain seminal fluid.

9 Q. Assume that the tissue you
10 examined was used by the suspect to wipe his
11 penis after having vaginal, anal and oral
12 intercourse. Would there be fluid, were there
13 fluids on that tissue from the woman?

14 A. I would certainly expect there
15 to be. From past experiences with types of
16 evidence like this.

17 Q. But you don't really have a test
18 to determine for sure?

19 A. No, sir. Except for determining
20 the blood group factors present there.

21 Q. Assume on the tissue was vaginal
22 fluid from type O secretor. What would that
23 tell you about the secretion type of the man
24 who emitted the seminal fluid?

25 A. If the vaginal fluid present or

1 any secretion was type O from the woman; the
2 seminal fluid would have to be from a person
3 with type O secretions or from a non-secretor.

4 Q. You examined the secretions from
5 the suspect and what type are they?

6 A. He's a non-secretor.

7 Q. What percentage of the men are
8 type O?

9 A. About 38 percent of the
10 population would be type O secretors. About 20
11 percent would be non-secretors. So
12 approximately 58 percent of the male population
13 could be included in this group.

14 Q. Assuming that on this tissue was
15 fluid from the woman's body and she's a type O
16 secretor, what percentage of the male
17 population would be eliminated in determining
18 the identity of the man who emitted the seminal
19 fluid you found?

20 A. About 42 percent of the
21 population. This is the whole population. The
22 whole male population.

23 Q. What is the significance of this
24 test in this particular case?

25 A. Well, it's a means of

1 eliminating an innocently accused person. In
2 other words, if the defendant had type A
3 secretions and I had identified seminal fluid
4 in sufficient fluids to determine a secretion
5 type, then I would assume this was not his
6 seminal fluids. Of type B or AB. Something
7 other than a non-secretor.

8 Q. The seminal fluid had to be from
9 a non-secretor or a type O?

10 A. That is correct. I might also
11 say one of the tissues had blood on it. I
12 don't know if this has any significance.

13 Q. One of the two had blood?

14 A. One of the two on which I
15 identified seminal fluid also had blood on it.

16 MR. SLAUGHTER: Judge, I believe
17 that is all I have of the chemist. I ask that
18 be introduced into evidence.

19 THE COURT: Marked C-1. So
20 received.

21
22 CROSS-EXAMINATION

23
24 BY MR. BASHARA:

25 Q. Turning your attention to C-1.

1 I'm fascinated with the hair. I understand
2 that secretion can include 58 percent of the
3 male population, which is over half the male
4 population in this country. But let's turn to
5 the hair. We know from C-1, that is your report,
6 and we have already stipulated, laid the ground
7 work for my question to you. We, as lawyers,
8 have stipulated to the Court that this recovery
9 kit followed the unbroken chain of hands until
10 it found its way to you and we see you opening
11 the kit and investigating what is in the kit.
12 That is item one.

13 A. That's right.

14 Q. Then we have known quantities.
15 We know we have Negroid hair. We know we have
16 a hair sample from the victim and hair samples
17 from the suspect?

18 A. Right. Not in that first kit.

19 Q. Later we received it?

20 A. Right.

21 Q. We know you are provided with
22 samples and we have stipulated to the chain of
23 command. Then you go to item two, the alleged
24 victim's bed sheets and you compare the hairs
25 that were noted. None of these hairs are

1 consistent with the hair sample of the suspect.

2 We know that.

3 A. That's correct.

4 Q. We know that because of -- and
5 you know, when I was young, I had a five power
6 microscope and I used to look at hair samples
7 and I used to think it was an oil shaft running
8 up the center. Now I see the shafts have a lot
9 of individual characteristics.

10 A. Yes, sir.

11 Q. Because of so many
12 characteristics, the degree of probability of
13 accuracy is increased?

14 A. I think so.

15 Q. The more characteristics you can
16 find, the greater percentage of accuracy?

17 A. That's right.

18 Q. We see these on the bed sheet
19 are inconsistent with the hair of the suspect?

20 A. That is correct.

21 Q. And the inconsistencies are
22 easier to spot many times than the
23 consistencies?

24 A. Sometimes. Yes.

25 Q. To a trained expert. Now, on

1 item three, the pillow cases, item three here,
2 no examination conducted.

3 item four, bed clothing of
4 victim. None of the hairs recovered from the
5 brown robe are consistent with the hair samples
6 from the suspect.

7 A. That's right.

8 Q. We find inconsistencies of these
9 hairs that match neither the alleged victim or
10 the suspect.

11 A. Oh, no. I didn't say that.

12 Q. What you are saying --

13 A. I'm saying they're inconsistent
14 with hairs from the defendant. I don't -- let
15 me see if my notes reflect if I compared them
16 with the victim's own hair. Yes, I did and
17 they were not the suspect but they were the
18 victim's hair.

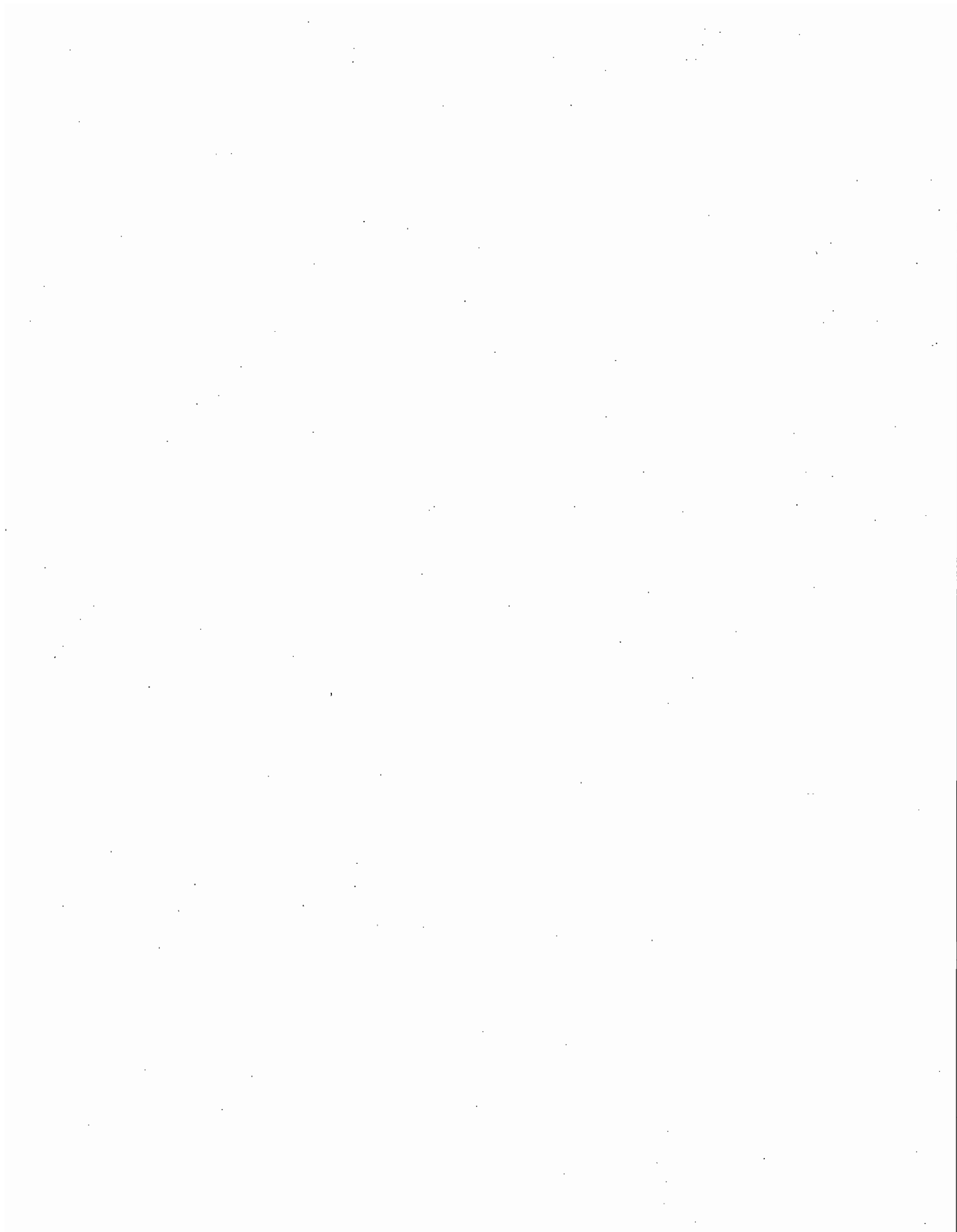
19 Q. They were consistent with
20 victim's hair?

21 A. That's right.

22 Q. Inconsistent --

23 A. That's right.

24 Q. Hair samples. How about item
25 two? The bed sheets?



1 A. They were from the victim.

2 Q. Not from the suspect?

3 A. That's right.

4 Q. As far as hair tests -- fine.

5 Thank you. I have no further questions.

6 MR. SLAUGHTER: I have nothing
7 further.

8 THE COURT: Well, this witness,
9 can she be excused?

10 MR. SLAUGHTER: Yes, sir.

11 THE COURT: Thank you very much.
12 You are excused.

13 MR. SLAUGHTER: Judge, we rest
14 at this time.

15 THE COURT: All right.

16 MR. BASHARA: Judge, I would
17 make a motion to strike the Commonwealth's
18 evidence at this time based on its own forensic
19 display that they have indeed proven that the
20 hair samples analyzed are not the hair samples
21 of the suspect. And I think forensically the
22 Commonwealth has proved its own case against
23 itself as far as this defendant is concerned.

24 MR. SLAUGHTER: Judge, we have
25 found in the pubic combings of the victim, hair

1 that is consistent with the suspect's hair.

2 The third fragment is consistent with pubic
3 hair samples from the suspect, item seven. So
4 in the victim's pubic combings is a hair sample
5 that is consistent with the defendant's hair
6 samples.

7 MR. BASHARA: She said she
8 received the suspect's in a different package.
9 That was the third fragment that she was
10 supplied that would be proven to be his hair.

11 MR. SLAUGHTER: The combings
12 contained three Negroid pubic hairs. Two of
13 these are consistent with pubic hairs from the
14 victim. The third is consistent with pubic
15 hairs of the suspect.

16 MR. BASHARA: I asked the
17 question and she said it was not received at
18 the same time. It's in the record

19 THE COURT: Of course as related,
20 it is consistent with the pubic hair from
21 suspect. She may have said she did receive some
22 later, I believe.

23 MR. BASHARA: That's right, Your
24 Honor. That was the hair he provided. Not
25 commingled.

1 MR. SLAUGHTER: Later she
2 received the known hair from the suspect and
3 she is saying the hair she received, one of the
4 hairs from the combings of the victim was
5 consistent with the known hair of the suspect.

6 THE COURT: Though she received
7 it later didn't mean later after the
8 examination. She received it later from the
9 first group, but it was used in this analysis.

10 Of course, we have her
11 identification. Now she does mention about the
12 defendant, the stocking cap and, of course, the
13 day before Thanksgiving, he was there. She did
14 not identify him, as you pointed out, to the
15 police when the pictures were presented. Of
16 course, when she saw the picture she said I
17 knew that I knew then. Whether she means that
18 is confirming it in her mind or making certain
19 and so forth.

20 Then the scientific evidence, of
21 course, as positive as the chemist, the
22 scientific people get, they say it's consistent
23 with and so forth and she went into detail
24 about the secretor, the fact that the victim,
25 she is a secretor and the defendant a

1 non-secreter. Which, of course, means with the
2 person who secretes, these factors are in all
3 their body fluids and she related what she said,
4 of course, the type O and so forth.

5 I believe that evidence
6 certainly has established a prima facie
7 situation at this stage, and I'm going to
8 overrule your motion.

9 MR. BASHARA: Call Miss Davidson
10 to the stand.

11
12 ROSA PRESLEY,
13 called as a witness, having been
14 first duly sworn, was examined and
15 testified as follows:

16
17 DIRECT EXAMINATION

18
19 BY MR. BASHARA:

20 Q. What's your name, please?

21 A. My name is Rosa Brown Presley.

22 Q. Are you related in any way to
23 the defendant?

24 A. Yes, sir. I'm his mother.

25 Q. And where -- your son has been

1 know if you actually talked to him. Isn't it
2 normal that you type up a piece of paper and
3 take to the person for reading or
4 identification or something? It's possible you
5 could have talked to somebody else and he could
6 have talked to somebody else.

7 A. Not in a case such as this. Mr.
8 Fly was not one of the Commonwealth witnesses.
9 All I did was went by his house and left my
10 card. He called me and introduced himself as
11 Albert Fly on the telephone. He knew who I was
12 because he called me by name and gave me that
13 statement over the phone. I saw no need to
14 take a written statement out there and have him
15 sign it.

16 Q. I have no further questions.

17 MR. SLAUGHTER: No further
18 questions. I have no further evidence.

19 THE COURT: Counsel may argue.

20 (Closing argument by Mr. Slaughter.)

21 (Closing argument by Mr. Bashara.)

22 (Final closing argument by
23 Mr. Slaughter.)

24 THE COURT: Certainly you
25 gentlemen have examined the testimony

1 microscopically just as the chemist, that is
2 interesting and I remember her speaking about --
3 Mrs. Burton, about the two-pronged microscope.
4 I think we have all seen on film, where both
5 objects are placed under it and she's able to
6 compare. Now true we don't, that is not a
7 fingerprint. The fingerprint by itself in the
8 peculiar place that is not open to the public,
9 so to speak, has been sufficient. The event
10 case.

11 In this case, of course, it's
12 true it would be fine if it were not so but
13 it's true we can't tell if a person is telling
14 the truth by the Adam's apple, if a person is
15 nervous. Sometimes a person that is really
16 nervous is the one more telling the truth if
17 they haven't been used to being on a witness
18 stand. They may be telling the truth more. We
19 can't be certain positively of those types of
20 factors.

21 The victim, there can be no
22 question of the rape and sodomy and so forth.
23 Her injury and the operation and so on and so
24 forth she had to go through. The 5:15 to six
25 a.m. when it occurred. She used the word, I

1 believe, the phrase, she said the defendant had
2 a stocking cap, I think she used the phrase
3 of course, she used one other
4 phrase, too that was rather significant while
5 it's on my mind. We did hear, you gentlemen
6 discussed about knowing so long. Yet she did
7 say really she had not seen the defendant
8 recently at all for a number of years. The day
9 before, she did see him. He did come by the
10 day before but seemed like she had not seen the
11 defendant as a boy, known for years of course,
12 a number of years. Eight years or whatever.
13 But she had not seen him recently but for the
14 day before. And kissed her on the cheek and so
15 forth and that discussion that was mentioned.

16 It is true and, of course,
17 certainly I listened intently. She did not
18 give the detective the defendant's name. She
19 did say, We call him brother. Still she didn't
20 identify him. The police came by with the
21 pictures and in response she did say that
22 phrase, that's when I knew that I knew. We
23 asked why not tell the police.

24 There is another rather
25 significant phrase though. She said he came

1 back that same morning and, of course, the
2 question we have to ask, is she inventing this
3 and it certainly would seem she perhaps more
4 than any of us wishes to have the right person
5 convicted. She did say he came back, the
6 defendant, not a little bit later. It was
7 fairly soon apparently. I came back to help
8 you with the window. Certainly he wouldn't
9 have known about the window and that sort of
10 thing. And this was, it would seem before she
11 talked to Mrs. Whittaker.

12 Of course, the testimony and
13 pictures, Detective Hockman, he went through,
14 and the various witnesses.

15 But without going through all
16 the testimony, of course, Mrs. Burton, the
17 chemist, and the expert and the microscope and
18 the various things. These factors are very
19 important and significant to me. First of all,
20 the identification. She does give an
21 identification. Yes, it is somewhat qualified.
22 She doesn't first give the name. She says she
23 hadn't seen him recently but for the day before.
24 She mentioned he came back about the window, to
25 help you fix the window and so forth. She and

1 certainly on the stand today very positive in
2 the identification. Later the pictures and so
3 forth. Of course, we have various items. It
4 was mentioned about the unusually large male
5 organ, the penis. Certainly when a person is
6 tall, the color of hair, that alone is
7 certainly insufficient to convict by itself.
8 Those tissues certainly that the person used, I
9 cannot reach a conclusion that she invented the
10 person used the tissues to clean himself off.
11 Those tissues tell us a couple of things.
12 There was blood on the tissues that the person
13 used to wipe his penis. And blood on the
14 tissues, the seminal fluid, the type O, the
15 type she has. Then it had the type of a
16 non-secretor. The defendant is a non-secretor.
17 That by itself isn't totally conclusive.
18 Forty-two percent are of that, so that doesn't
19 nail it down.

20 The defendant coming back. I
21 have come back to fix the window. The pubic
22 hair that combed out of her pubic area. Then
23 there were two hairs, three actually, fraction
24 of another one. When she says consistent with
25 the defendant, that is quite a positive

1 statement because like Mr. Bashara mentioned we
2 thought in that hair it was hollow in the
3 middle and actually it has the well, the cortex,
4 andand then it has granules, a lot of factors,
5 the cuticle. I wasn't sure what that was.
6 Like the core of it. Not the core but just
7 past the outside wrapping. Whatever that would
8 be.

9 There are a lot of factors and
10 when she looks at it with the two-pronged
11 microscope and they're the same. She can't say
12 it's the same like a fingerprint, but many
13 factors are identical before she says they're
14 consistent. And there are three pubic hairs,
15 two from her area, and the reason the defendant
16 has two prior felonies is not reason to convict
17 him. That goes to credibility, as we know. No
18 hairs on the sheets. It seems these are
19 factors to consider.

20 Mr. Fly, Detective Hockman
21 related November 26, Thanksgiving eve he spent
22 the night with the defendant's mother, which
23 would somewhat confirm the fact that also that
24 would be the night the defendant is away. He
25 stayed with his sister at Meadow Creek Road and

1 then also, these statements are opposite to the
2 defendant has testified. The defendant said he
3 did not kiss the cheek of the victim. And the
4 detective mentioned shake the hand or kiss.

5 When I look at the factors, the
6 identification she makes. Then the large male
7 organ which seemed to trigger something to the
8 police because they went out and right after
9 that statement were able to pick up the
10 defendant. Be that as it may. Then the
11 tissues, the fact of blood and seminal fluid.
12 Coming back to the window and the pubic hair,
13 which is quite far reaching. And, of course,
14 the statements that the detective related that
15 the people said did not make to him.

16 I feel in view of all those
17 factors, I have to reach the conclusion that
18 the complainant is correct. That it is
19 supported by that scientific evidence and her
20 identification and I'm going to find that the
21 defendant is guilty of the charges.

22 Indictment one, the burglary,
23 I'm going to convict under the first count,
24 count number one. It was not really
25 established whether it was nighttime or day

1 time. It was probably dark but it makes no
2 difference if it was a break in. The opening of
3 a door is a break in, the raising of a window,
4 the cases tell us. We have that situation here.
5 Thus count number one.

6 I'll refer the matter for the
7 presentence report, so we can have all that
8 before us to make a proper sentencing.

9 MR. BASHARA: Thank you, your
10 Honor. What time?

11 THE COURT: We'll make July 14th
12 the date for disposition at nine o'clock that
13 day.

14 MR. SLAUGHTER: I'm sure there
15 is a bond set and I ask it be cancelled, that
16 he not be allowed to get out on bond.

17 THE COURT: I'll make the
18 situation no bond pending the report.

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C E R T I F I C A T E

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, to wit:

I, Lois Baker McLellon, RPR, do hereby
certify that the foregoing pages are a true and
correct transcript of my Stenotype notes of the
proceedings had at the time and place in the
caption mentioned.

This 3rd day of September,
1981.

Lois Baker McLellon

Court Reporter