

1 the hearing of the court reporter and the jury:)

2 (Thereupon, the following proceedings were had
3 within the hearing of the jury:)

4 THEREUPON:

5 GEORGE BORGHI
6 was called as a witness on behalf of the Plaintiff and,
7 having been duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. WAKSMAN:

11 Q Sir, would you tell us your name, please?

12 A George Borghi.

13 Q Who do you work for?

14 A Public Safety Department, Crime Laboratory.

15 Q In what capacity?

16 A I am a criminalist.

17 Q What is a criminalist?

18 A A person with a background in science who
19 analyzes physical evidence and draws conclusions upon
20 these analyses and testifies in a court of law, if
21 necessary.

22 Q How long have you been so employed?

23 A Five and a half years.

24 Q And could you turn to the Court and render an
25 opinion as to how many times you have had test analyses?

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1 A Several times.

2 Q Several times?

3 A Many times.

4 Q And could you give us your background and
5 experience?

6 A Experience and background, Bachelor of Science
7 degree in chemistry from Florida International
8 University's Internal Crime Laboratory, from September
9 1974 until January of 1975. I worked as a criminalist
10 trainee from 1975, January, to August of 1976, at which
11 time I began working on my own cases, and I have done so
12 ever since.

13 I am a member of the professional organization,
14 that is, the American Academy of Forensic Sciences,
15 Southern Forensic Scientist.

16 I have attended the F.B.I. Academy for advanced
17 bloodstaining analysis, working in Quantico Virginia for a
18 60-hour course and I subscribe to the journals written in
19 forensic fields and stay abreast of current literature in
20 the field.

21 Q Do you read the current literary literature?

22 A Yes, I do.

23 MR. WAKSMAN: I tender the witness as an expert
24 in the field he described to us.

25 MR. BLACK: No objection.

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1 THE COURT: I find him an expert.

2 MR. WAKSMAN: Thank you, your Honor.

3 Q (By Mr. Waksman) Mr. Borghi, did there come a
4 time during the course of your duties with the Public
5 Safety Department that you received certain samples which
6 were purported as coming from the Rape Treatment Center by
7 a victim by the name of [REDACTED] ?

8 A Yes.

9 Q Let me show you State's Exhibit---

10 MR. WAKSMAN: Have you viewed this yesterday?

11 MR. BLACK: We did.

12 Q (By Mr. Waksman) I show you State's Exhibit
13 Number 1-J, a sealed envelope.

14 Would you tell us where you got that from?

15 A From the Dade County Public Safety Department
16 Property Bureau.

17 Q Does it carry a Public Safety Department case
18 number on it?

19 A Yes, sir; it does.

20 Q What is that number?

21 A 184351-Z.

22 Q Would you open it up on the unsealed end leaving
23 that red evidence seal intact and tell us if you have ever
24 seen what is inside, State's Exhibit Number 1-J before?

25 MR. BLACK: We have already stipulated to the

1 different chain of custody on this, just move it into
2 evidence.

3 THE COURT: Mr. Waksman, they have already
4 stipulated to the chain of custody.

5 Move this into evidence.

6 Admit it into evidence as the next exhibit for
7 the State.

8 THE CLERK: The State's Exhibit Number 1-J for
9 identification is now State's Exhibit Number 14 into
10 evidence.

11 (Thereupon, the above-referred to document was
12 marked as State's Exhibit Number 14 into evidence.)

13 Q (By Mr. Waksman) All right, would you open up
14 that bag and tell us what is in there and---

15 A It is the standard group of evidence submitted
16 by the Rape Treatment Center to the laboratory.

17 Q Have you seen that standard type of evidence
18 come from the hospital before?

19 A Yes, many times.

20 Q Do you have a test tube in there which is known
21 as a vaginal aspirate?

22 A Yes, I do.

23 Q Do you have something in there--test tube, leave
24 out the vaginal aspirate, and do you have a test tube in
25 there which is purported to be [REDACTED] blood

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1 sample?

2 A Yes.

3 Q And her saliva sample?

4 A Yes.

5 Q Are you familiar with the international blood
6 groupings?

7 A Yes.

8 Q Can you please tell the folks on the jury their
9 use?

10 Here is the blackboard if you feel that you need
11 further explanation. This shows what the blood groupings
12 are.

13 A All individuals fall into four major categories
14 of blood groups, in terms of the international blood group
15 B system, as B's, O's and AB's.

16 If the entire population of the world were to be
17 typed by the sampling that is done thus far, it would show
18 that approximately three percent of all informations are
19 type AB; 47 percent type O, ten percent are type B and 40
20 percent would be type A.

21 Q Mr. Borchhi, let me ask you something now.

22 Do these, for lack of a better words, these
23 things that are called A, B, O, AB, do they appear to be
24 fluids other than human blood?

25 A Yes, in 60 percent of all individuals, you will

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1 find the same blood group substances in their saliva,
2 perspiration, semen, any body fluid other than blood, and
3 this is a 60 percent of all individuals.

4 Q What are those people called?

5 Do they have a special term or a name?

6 A These people are called secretors.

7 Q Why is that?

8 A Secrete blood group substances and other body
9 fluids other than blood.

10 Q So you are telling us that 60 percent of the
11 population, you can determine somebody's blood type
12 by analyzing their fluids that they have other than their
13 blood?

14 A That's correct.

15 Q Will you have a seat?

16 A (Indicating.)

17 Q Did you have an occasion to analyze [REDACTED]
18 [REDACTED] to determine what group she belongs to?

19 A Yes.

20 Q And what blood group does she fit into?

21 A Group A classification.

22 Q Were you able to determine by analyzing her
23 saliva sample whether or not she secretes or shows her
24 blood group B in her other body fluid?

25 A Yes.

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1 Q And what is your opinion as to that?

2 A I was able to detect the antigen AB, therefore
3 she is a group A secretor.

4 Q Therefore, her type A would show up in all of
5 her body fluids?

6 A Yes.

7 Q Would that include any vaginal secretions, any
8 fluids in her vagina as well as her perspiration, tears,
9 sweat, anything?

10 A That's right.

11 Q Could I have her blood and her saliva sample,
12 please.

13 A (Indicating).

14 Q And are these the two items that you evaluated
15 her saliva sample and her blood?

16 A Yes.

17 MR. WAKSMAN: Could we move this as a composite
18 exhibit?

19 THE COURT: You want this into evidence?

20 THE CLERK: They were all the same envelope,
21 make them composite as 14.

22 THE COURT: Yes, that would be fine.

23 There is no objection?

24 MR. BLACK: Just the previous matters that were
25 discussed with the Court, but no objection to the

1 chain of custody.

2 Move it all into evidence.

3 THE COURT: Subject to the prior objection made
4 out of the presence of the jury.

5 (Thereupon, the above-referred to document was
6 marked as State's Exhibit Composite Number 14.)

7 Q (By Mr. Waksman) Did you also have occasion to
8 analyze the fluids that were purportedly collected from
9 [REDACTED] vagina at the Rape Treatment Center?

10 A Yes.

11 Q And that is what is known as a vaginal
12 aspirate?

13 A Yes.

14 Q And that is in front of you now?

15 A Yes.

16 Q What blood type groupings or body fluid
17 groupings, if any, did you find in the vaginal aspirate?

18 A The ANH antagen as well as what was found in th
19 saliva sample.

20 Q Would that be consistent with fluids coming out
21 of [REDACTED] body alone?

22 Let's just take her alone. Would that be
23 consistent if you analyzed the fluids of a person who was
24 a group B, would you expect to find, as in their own body
25 fluids---

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1 A That they are a secretor.

2 Q That she is a secretor?

3 A Yes.

4 Q Can I have the vaginal aspirate?

5 A (Indicating).

6 MR. WAKSMAN: I move this in as part of 14.

7 THE COURT: Admitted into evidence.

8 MR. BLACK: Just the other prior objection; no
9 objection to the chain of custody.

10 (Thereupon, the above-referred to document was
11 marked as State's Exhibit Number 14, composite.)

12 Q (By Mr. Waksman) Were you present when a saliva
13 and blood sample was taken from the defendant, Luis Diaz?

14 A Yes.

15 Q Let me show you State's Exhibit 1-K.

16 Do you know what this is?

17 A Yes, I do.

18 Q What is it?

19 A That is the bag that I placed the samples into
20 after I got them.

21 Q Did you actually see the blood and saliva come
22 from the body of Luis Diaz?

23 A Yes.

24 Q And do you see that man in the courtroom today?

25 A Yes.

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1 Q Where is he?

2 A The man in the dark coat and blue shirt.

3 MR. WAKSMAN: Indicating the defendant for the
4 record.

5 Q (By Mr. Waksman) Did you have occasion to
6 analyze his blood group to determine which grouping he
7 belongs to?

8 A Yes.

9 Q And what blood group does Mr. Diaz belong to?

10 A He is a group A individual.

11 Q All right, did you also have an occasion to
12 analyze a saliva sample that you observed Mr. Diaz
13 giving?

14 A Yes.

15 Q Based upon your analysis of the saliva, did you
16 determine a blood grouping in his saliva as well?

17 A Yes, I did.

18 Q What does that mean?

19 A That means that Mr. Diaz is also a group A
20 secretor.

21 Q Does that mean the A will be found in all of his
22 body fluids?

23 A That's correct.

24 Q Not only saliva, but all of his fluids?

25 A That's correct.

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1 Q Such as perspiration, tears, seminal fluid?

2 A That's right.

3 Q Anything?

4 A Yes.

5 Q If you analyzed Mr. Diaz' seminal fluid, based
6 upon your analysis of saliva and fluid, what fluid
7 grouping would you expect to find in the seminal fluid?

8 A The A.

9 Q ~~When you analyzed the fluids taken out of~~
10 ~~_____ vagina, what were the only fluid groupings you~~
11 ~~found?~~

12 A The A.

13 Q All right. You used the term H before.

14 ~~Could you go back to the blackboard and tell us~~
15 ~~what the H has to do as to A, B, or A and B?~~

16 A Would you like me to do it on the blackboard?

17 Q Please.

18 A All right.

19 (Thereupon, the witness left the witness stand
20 and went over to the blackboard.)

21 A See each of these groupings has secretors and
22 non-secretors.

23 If a person is a secretor, they will have
24 present--first of all every secreter has H.

25 Q So when you find an H in some fluid that you are

1 analyzing, does that tell you anything other than the
2 facts
3 that they secrete their body type into their other
4 fluids?

5 A That is what it tells you.

6 Q Doesn't it tell you if this is an A, B, or O?

7 A Not unless you test for O specific antigens.

8 Okay, in this individual, you find the A
9 (indicating).

10 You find the B in this individual, as well as
11 the H (indicating).

12 Here you just find the H because they have
13 neither A nor B which is where the term came from.

14 Q How did the terminology A, B come about?

15 A I don't know.

16 Q Could you find both A and B in a B person?

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1 A Yes, A and B as well as H.

2 In non-secretors, you find something in--I am
3 speaking about body fluids now, not blood findings,
4 nothing there, or there in any of the individuals.

5 Non-secretors will not exhibit A or B or H
6 regardless of what type they are.

7 Q Getting back to [REDACTED] vaginal washings,
8 you found an A and an H, I believe you said?

9 A Yes.

10 Q Would that be consistent or inconsistent with a
11 secretor-type person?

12 A Consistent.

13 Q Would it also be consistent with an O secretor?

14 A If finding---

15 Q Assuming that she is also a A secretor.

16 Let me rephrase that question.

17 When you analyzed her vaginal washings, all you
18 found was A's and H's?

19 A That's right.

20 Q Is there any way to determine whose A you found
21 in the vaginal washings?

22 A No.

23 Q Is there any way to determine whose H's you
24 found?

25 A No.

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1 Q And as a matter of fact, everyone who secretes
2 has an H?

3 A That's right.

4 Q And if you found, as you couldn't tell if they
5 were A's or the--A's of the person who left the seminal
6 fluid?

7 A That's right.

8 Q Did you find any sperm?

9 A Yes.

10 Q Would that be a fairly good indication that the
11 substance you were analyzing, was, in fact, seminal
12 fluid?

13 A There was definitely seminal fluid in there
14 because of the fact there was sperm in there, and in the
15 amount that was there, it would have been typeable in that
16 I found sperm cells.

17 Q So you knew that you were dealing with a
18 substance that contained some part of seminal fluid?

19 A Yes.

20 Q Is that what you found?

21 Is there any way to determine whether that came
22 from the person who deposited the seminal fluid or--came
23 from the person who deposited the other vaginal
24 secretions?

25 A The mixture needs room to differentiate.

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1 Q What type of a--assuming that [REDACTED] is a
2 person who secretes her A's into all her fluids, and that
3 the fluids analyzed were her fluids, at least partially,
4 and partially the fluids of someone who put seminal fluid
5 into her, what type of a person could have left seminal
6 fluid in her?

7 A Okay---

8 Q Which of the four groups could possibly have
9 done it considering---

10 A It could have been---

11 Q Could it have been an A secretor person?

12 A ~~Yes, could be an A secretor person.~~

13 Q Okay, is Diaz a secretor person?

14 A Yes.

15 Q ~~Could Diaz have left the seminal fluid in Laura~~
16 ~~Coburn?~~

17 A ~~Yes.~~

18 Q Is that your professional opinion?

19 A Yes.

20 Q Could a person who is an O secretor have merely
21 deposited an H and, therefore, possibly have been the
22 person who left the seminal fluid in her?

23 A Yes, because of the H from this individual and
24 the A and H from this individual mixing could be positive
25 without destroying H and A.

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1 Q And you wouldn't be able to determine whose H
2 and A it was?

3 A That's right.

4 Q Would a person who was a non-secretor, but a B
5 person--person who was B type, but did not secrete any
6 grouping in their seminal fluid, could a B person have
7 left that seminal fluid?

8 A A non-secretor B.

9 Q A non-secretor B, could he have left it?

10 A Yes.

11 Q Could a non-secretor AB, who would not secrete
12 his AB's into seminal fluid, could that person have left
13 it?

14 A Yes.

15 Q Which groups of people could not have possibly
16 have left that seminal fluid in [REDACTED]?

17 A AB secretor.

18 Q Why?

19 A Because I would have detected the B antigens.

20 Q And did you detect any B's?

21 A No.

22 Q What percentage of the population would be AB
23 secretors?

24 A Well, 60 percent of three percent.

25 Q About two and a half, two and a quarter?

1 A Yes.

2 Q Let's give him a break and call it two percent.

3 A Two percent.

4 MR. BLACK: Total comes out to 10.45.

5 MR. WAKSMAN: Not cross-examining this man.

6 MR. BLACK: Just assisting on the matter.

7 THE COURT: He is correct on that.

8 MR. WAKSMAN: He doesn't work at the Crime Lab.
9 I would like to ask the expert.

10 MR. BLACK: I am sorry.

11 THE COURT: Go ahead.

12 Q (By Mr. Waksman) A B person who secretes his
13 B's into his seminal fluids, what percentage of the
14 population makes up those types of persons?

15 A B individuals are ten percent of the population
16 and eight percent of the ten percent is about 80 percent.

17 Q Eighty percent of those ten percent who showed
18 their B's in seminal fluid?

19 A That's right.

20 Q So you now have eight percent of the population
21 who show up AB in their seminal fluid?

22 A Yes.

23 Q And you have two percent of the population who
24 would show up in AB in their seminal fluid?

25 A Yes.

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1 Q Could anybody in that ten percent of the
2 population have been the person who left the seminal fluid
3 in [REDACTED]?

4 A No, if that were the case I'd have detected a B
5 antigens.

6 Q And the blood and saliva that you analyzed as
7 coming from Mr. Diaz, puts him into which category again?

8 A A secretor.

9 Q Is there any possible way that the person that
10 raped [REDACTED] could have been a B or AB secretor?

11 A I don't believe so, no, not in my opinion.

12 Q If Mr. Diaz were a B secretor, is there any
13 possible way that he could have been the one that did it?

14 A No.

15 Q If Mr. Diaz were an AB secretor, is there any
16 possible way that could have been his seminal fluid that
17 you found in her vagina?

18 A No.

19 Q And that category, although it's small, makes up
20 ten percent of the population?

21 A That's right.

22 Q And if Mr. Diaz were in this ten percent of the
23 population, he wouldn't be sitting here today?

24 MR. BLACK: Well, your Honor, please; I don't
25 know about that.

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1 I object to that.

2 THE COURT: Sustain the objection.

3 Q (By Mr. Waksman) Is there any possible way it
4 could be his seminal fluid if he were a B or an AB
5 secretor?

6 A No.

7 Q Are you aware of any other scientific tests that
8 would exclude Mr. Diaz as the person who left that seminal
9 fluid other than the tests you performed?

10 A No.

11 MR. WAKSMAN: Judge, we would like to move into
12 the blood and saliva of the defendant.

13 THE COURT: Can he have a seat?

14 Do you want him up there?

15 MR. WAKSMAN: No.

16 THE COURT: Have a seat.

17 Admit it into evidence, subject to the same
18 objections made earlier in the trial.

19 (Thereupon, the witness returned to the witness
20 stand.)

21 Q (By Mr. Waksman) Mr. Borghi, would you open up
22 State's Exhibit 1-K and tell us if we have the blood and
23 saliva of Mr. Diaz there.

24 A Yes.

25 Q That is the blood and saliva of Mr. Diaz?

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1 A Yes, it is.

2 Q And that is the substance that you analyzed to
3 determine if he was an A secretor?

4 A Yes, that is right.

5 MR. WAKSMAN: No further questions.

6 THE COURT: Are you offering that into
7 evidence?

8 MR. WAKSMAN: Yes, sir.

9 No, I have already 1-L into evidence.

10 THE COURT: Admitted into evidence subject to
11 the same objections.

12 MR. WAKSMAN: 1-K, I am sorry.

13 THE CLERK: State's Exhibit 1-K for
14 identification is now State's Exhibit Number 15 into
15 evidence.

16 (Thereupon, the above-referred to document was
17 marked as State's Exhibit Number 15 into evidence.)

18 CROSS-EXAMINATION

19 BY MR. BLACK:

20 Q I want to ask you a couple of questions about
21 these very interesting blood types that you put up on the
22 blackboard.

23 Excuse me, the green board--put a little line
24 there (indicating).

25 First of all, anybody who had--it's possible

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1 that the rapist could have been anyone in type A to begin
2 with, right?

3 A Yes.

4 Q Anybody who had type A in the world, right?

5 A Well, I don't know in the world, I'm assuming.

6 Q Can you tell anything from that whether a person
7 is Asiatic or African, Indian or Chinese?

8 A I was under the assumption that everyone in the
9 world wasn't in Miami at the time.

10 Q Now in your scientific terms, you are putting
11 your own interpretation on this?

12 A No.

13 Q You gave this in terms of the world population?

14 A Percentages, yes.

15 Q These percentages are not based on Miami, are
16 they?

17 A Actually, they are.

18 Q This is?

19 A Yes.

20 Q The City of Miami?

21 A Dade County.

22 Q Dade County? What happened if the rapist is
23 outside Dade County? Then this isn't valid?

24 A No, they are the same, really.

25 Q They are the same throughout the world, aren't

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1 they?

2 A Yes.

3 Q Very good; so any--it's consistent with any
4 person having type A as being the rapist of [REDACTED] ?

5 A That's correct.

6 Q It's consistent with any person in group O being
7 the rapist?

8 A That's correct.

9 Q So right away from that, we have 40 and 47.
10 That is 87 percent of the world's population could have
11 raped [REDACTED] ?

12 A By the groupings, yes.

13 Q By blood groupings? This is all you're
14 testifying to, correct?

15 A That's right.

16 Q And then you have the B and the AB?

17 Now you told us that only 80 percent of the
18 world's population secretes their blood type and their
19 other body fluids; is that correct?

20 A That's correct.

21 Q All right, so a B non-secretor is consistent
22 with having raped [REDACTED], right?

23 A That's right.

24 Q So that is another two percent?

25 A Yes.

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1 Q And an AB non-secretor is consistent with having
2 raped [REDACTED]?

3 A That's correct also.

4 Q So that we added up to number one, so the final
5 result of your testimony is that based upon your
6 scientific analysis that you did on all these samples that
7 ninety percent of the world's population is consistent
8 with having raped [REDACTED]?

9 A Speaking of blood groups, yes.

10 Q And blood groups?

11 A That's right.

12 Q Ninety percent of the world's population?

13 A That's right.

14 Q That's right, and, of course, that also means
15 ninety percent of Miami, Dade County, Broward County,
16 South Florida, State of Florida, et cetera, right?

17 A That's correct.

18 Q What you can tell us then is if we find somebody
19 who is a B secretor, who is eight percent of the
20 population and somebody who is an AB secretor, which is
21 two percent of the population--anybody within that ten
22 percent of the population could not have been the person
23 who raped [REDACTED]?

24 A That's right.

25 Q All right, so just to be--just so I understand

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1 your testimony is that Luis Diaz happens to fit into the
2 group that is composed of 90 percent of the world's
3 population, right?

4 A That's right.

5 Q And as you say in the Aristotelian equation we
6 are building here, we have 90 percent of the world's
7 population on top, right?

8 Luis Diaz is in that 90 percent of the world's
9 population, right?

10 A That's correct.

11 Q So that, based upon your scientific analysis,
12 it's consistent that Luis Diaz body fluids could have been
13 found in [REDACTED]?

14 A Shows consistency, yes.

15 Q Along with the other 90 percent of the world's
16 population?

17 A That's correct.

18 Q Now that is not all you did on this case, is
19 it?

20 A No.

21 Q You received certain materials or scrapings or
22 ~~dustings that were taken from a seat cover from a 1972~~
23 ~~Pontiac Catalina, didn't you?~~

24 A Yes.

25 Q ~~And you were asked to run certain tests on these~~

1 materials that you had gathered from other--excuse me--the
2 police had gathered from this particular car?

3 A That's right.

4 Q And did you run those tests?

5 A Yes, I did.

6 Q You were asked to run an acid phosphatase test?

7 A Yes.

8 Q And you also determined to see if sperm was
9 present?

10 A Yes.

11 Q And, I think, you found both of those tests were
12 negative?

13 A That's right.

14 Q Now let's--for a moment--let's talk about acid
15 phosphatase.

16 Now acid phosphatase happens to be the fluid
17 that sperm is carried in, isn't it?

18 A Not exactly, no.

19 Q But it is the carrier?

20 A It is one of the chemicals found consistent in
21 that fluid.

22 Q What you do when you want to determine if
23 seminal fluid is present--you usually do an acid
24 phosphatase?

25 A First, yes.

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1 Q Because that is a pretty good indicator that
2 seminal fluid is present?

3 A That is exactly what it is.

4 Q Now when you tested Diaz' car or you examined
5 the samples, you found that you could not find any
6 evidence of acid phosphatase or sperm; isn't that
7 correct?

8 A That's correct.

9 Q Now let me ask you hypothetically: If somebody
10 was having sexual intercourse in a car, and there is semen
11 spilled on the seat, and the scrapings were taken off the
12 seat, you could, within a certain period of time discover
13 whether or not there was semen and acid phosphatase
14 present, couldn't you?

15 A If I were given samples, I could tell whether or
16 not there was semen present.

17 Q Yes?

18 A Yes.

19 Q And you can do this within a period of time,
20 within a number of minutes, can't you?

21 A Possibly, yes.

22 Q As long as three months?

23 A Possibly, yes.

24 Q Right. And on the samples that you examined
25 from Diaz' car, you found no acid phosphatase present nor

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1 sperm, correct?

2 A Yes, that's correct.

3 Q Mr. Borghi, do you have your lab analysis of
4 your reports?

5 Can I take a look at that for a moment?

6 A I also have the one on the car seat.

7 Q Yes, that is what I was looking for.

8 All right, that sample from Diaz' car were
9 submitted on September 4 of 1979, weren't they?

10 A Yes.

11 Q That is when you physically got them?

12 A That is when they were brought to the
13 laboratory.

14 Q Now let's assume for a minute that somebody,
15 person or persons unknown deposited some seminal fluid and
16 sperm on that seat cover on June 24, 1979.

17 That is approximately what, two months and two
18 weeks or nine weeks or nine and a half weeks prior to your
19 getting the sample?

20 A Yes.

21 Q Would you not expect to find evidence of the
22 seminal fluid, acid phosphatase, or sperm within that
23 period of time, assuming it hadn't been scrubbed off or
24 something like that?

25 A Assuming it hadn't been scrubbed off, I would

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1 not be surprised to find it, no.

2 Q Wouldn't it be fair to say that you would expect
3 to find them within a three-month period or at least some
4 activities of acid phosphatase?

5 A Very possible, yes.

6 Q No, that is not my question.

7 My question is: Wouldn't you expect to find it
8 within a three-month period?

9 A Okay, let me answer it this way: My experience
10 in this type of situation in the past is that I can't
11 expect anything when it comes to my biological fluids.

12 Everything is dependent on the result of tests.

13 If I find it, I am not surprised. However, I
14 can't expect to find something there. I have to test for
15 it.

16 So to say that I definitely would expect it is
17 saying I would be surprised if I didn't find it. This is
18 to say that I wouldn't be surprised. I can't say I would
19 definitely expect it there because not knowing the
20 circumstances involved, what happened between the incident
21 and the time it was collected, and that sort of thing.

22 Q Let me--you remember giving a deposition in this
23 case, don't you?

24 A Yes.

25 Q Let me refer you to page eleven and twelve of

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1 your deposition, starting on the bottom of page eleven and
2 let me ask you if you recall this question and answer:

3 "Well, assuming that they sampled the right
4 areas and they properly preserved those samples and
5 gave them to you, let me pose the question again.

6 All right, I'll say it this way: If there were
7 dried semen stains on vinyl that were left intact and
8 weren't washed off, and they sampled them properly, I
9 would expect to find them within a three month
10 period, or at least some activity of acid
11 phosphatase."

12 A Okay, I qualified by saying if they didn't scrub
13 it off and so on.

14 Q But I asked you that as an approach: If you
15 scrubbed it off or changed the seat cover or bought a new
16 car, nothing is going to be there?

17 A Assuming all those things, I would expect to
18 find some activities, yes.

19 Q Thank you, sir.

20 MR. BLACK: No further questions.

21 REDIRECT EXAMINATION

22 BY MR. WAKSMAN:

23 Q Back to the ninety and ten again.

24 Is it consistent with the fact that the person
25 who placed that seminal fluid in [REDACTED] could not

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1 the hearing of the court reporter and the jury:)

2 (Thereupon, the following proceedings were had within
3 the hearing of the jury:)

4 THE COURT: Ladies and gentlemen of the Jury, we
5 are going to break for lunch now. I will ask you to
6 be back upstairs on the seventh floor at 1:15. We
7 will try to start as promptly thereafter as possible.

8 We should try to start right on the dot being
9 here at 1:15. I am going to let you go your separate
10 ways. Please don't talk to anybody. If you hear
11 anybody talking about the case, just ignore it and
12 walk away from them and don't look at the newspapers
13 because the newspapers are now covering this case.
14 At least do not read the Miami News or the Miami
15 Herald until after the case is over.

16 All right, you are excused for lunch. Have a
17 nice lunch.

18 (Thereupon, the jury retired from the courtroom and
19 the following proceedings were had:)

20 THE COURT: Now that the jury is out, let's get
21 on the record what you are doing.

22 MR. BLACK: If your Honor please, just for the
23 record, the State has one witness left that it wishes
24 to call, and that is Detective Mendez.

25 We have a number of side bars without the court

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