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TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON  
STATE OF LOUISIANA

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STATE OF LOUISIANA \* NO. 87-0205  
\*  
VERSUS \* DIVISION "G"  
\*  
WILLIE JACKSON \*  
\* \* \* \* \*

Testimony and proceedings taken in the  
above numbered and entitled matter on August 24,  
1989, before the Honorable Frank V. Zaccaria,  
Sr., Judge Ad Hoc, and a jury.

APPEARANCES:

Alan Green, Esq. Assistant District Attorney  
Phillip E. O'Neill, Esq. Attorneys for Defendant  
and  
Mark Burton, Esq.

REPORTED BY: Faye B. Cemo, CSR

1                                   JOSEPH WARREN, 1542 Tulane Avenue, New  
2 Orleans, Louisiana, was called as a witness, and after  
3 having first been duly sworn, was examined and testified  
4 on his oath as follows:

5                                   DIRECT EXAMINATION

6 MR. GREEN:

7 Q    Mr. Warren, by whom are you employed?

8 A    I am currently chief forensic molecular biologist  
9           for Louisiana Laboratories and Forensic  
10           Science, which is located at LSU Medical School.  
11           I am also self-employed at my own private  
12           forensic consulting business.

13 Q    And how long have you been so employed?

14 A    Since August of 1988,

15 Q    Were you employed previous to that time?

16 A    Yes, sir, I was.

17 Q    By whom were you employed at that time?

18 A    By the Jefferson Parish Sheriff's office, crime  
19           laboratory.

20 Q    And in what capacity were you employed by the  
21           Sheriff's office?

22 A    I was their forensic biologist.

23 Q    And how long did you work in that capacity?

24 A    From July, 1984 till August, about 1988.

25 Q    And would you give me some insight, or give the  
26           Court some insight as to your educational  
27           background.

28 A    Yes, sir. 1978, I obtained a bachelor of science  
29           degree in biology from Tulane University.

1 In 1980, I obtained a master of science degree  
2 in biology with specialization in sub-biology--

3 THE COURT:

4 Excuse me--

5 MR. O'NEILL:

6 Your Honor, I don't mean to cut him off,  
7 but maybe we could stipulate and save some time  
8 if he's going to testify that he is a biologist.  
9 I am not going to argue against that. I will  
10 be willing to stipulate to that.

11 THE COURT:

12 All right,

13 MR. O'NEILL:

14 College graduate in biology, and he's  
15 going to testify to things that a biologist  
16 testifies to.

17 THE COURT:

18 Is that what your testimony consists of,  
19 sir?

20 THE WITNESS:

21 Yes, sir.

22 THE COURT:

23 All right. The Court understands there  
24 is a stipulation, and he would be allowed to  
25 testify as an expert in that field.

26 MR. GREEN:

27 Thank you, Your Honor.

28 MR. GREEN:

29 Q Now, Mr. Warren, would you explain to the jury the

nature of the kind of work you do.

3 A. Yes, sir. In the field of forensic biology, we are  
4 basically concerned with the analysis of body  
5 fluids such as blood, saliva, seminal fluid,  
6 vaginal fluid, perspiration. And we obtain  
7 various genetic markers from those fluids.  
8 Genetic markers is a substance you inherit from  
9 your mother and your father. It stays with you  
10 throughout your natural life. What we try to  
11 do is to isolate these genetic markers and  
12 match up the genetic markers and any body  
13 fluids at the crime scene to match them up to  
14 the known suspects, or known accused concerning  
15 the crime.

16 Q. Now, what is the significance of the information that  
17 you obtained as a result of this type of  
18 analysis?

19 A. Basically, what we try to do is to--well, in the case  
20 here, conventional genetic markers, the ones  
21 we are talking about today, your blood group,  
22 and enzymes, is we try to see whether the body  
23 fluids is found in connection with the crime  
24 contain the same genetic markers as that of  
25 either the suspect, or the victim, and what  
26 percent of the population will have those  
27 genetic markers. Or if they are different, we  
28 could exclude someone from being a suspect in  
29 the crime if we find a different type of genetic  
30 marker than those obtained at a crime scene.

1 Q Now, can this be applied to the determination of  
2 differentiation of blood typings?

3 A. That is correct, that is one of the genetic markers  
4 we look for.

5 Q And it would be determined as far as analysis of  
6 sperm, or semen?

7 A. That is correct. It's a body fluid.

8 Q And what type of analysis can be made in that instance?

9 A. There are several types initially. What we do is we  
10 get an article of evidence, such as piece of  
11 clothing, for instance, a weapon used, something  
12 found at the crime scene. And we look to see  
13 if there is any stains, or any body fluids that  
14 could be found on it. If there are, we then  
15 attempt to determine what that body fluid is,  
16 whether it is blood, saliva, seminal fluid.  
17 Once we determine what that body fluid is, in  
18 the case of blood, for instance, we try to  
19 determine whether it's human or non-human.

20 The case of seminal fluid, we try to see  
21 whether it is sperm there, or no sperm. At  
22 that point we then do look for these genetic  
23 markers. First of all, we look for these blood  
24 types. Most of you, I'm sure, are familiar  
25 with it. There are four types of blood: Type  
26 A, type B, type O and type A-B. We also try  
27 to go beyond the blood types and try to get  
28 better discriminating factor by looking for  
29 other genetic markers.

1  
2 In this particular case we looked for a  
3 specific enzyme, or PGM. PGM is an abbreviation  
4 for a rather long word which we don't have to  
5 go into right now. But the enzymes, again, like  
6 blood types are genetic markers. And there are  
7 three main types: PGM type 1; PGM type 2-1;  
8 and PGM type 2. PGM's is found both in your  
9 blood, and in seminal fluid. Also in seminal  
10 fluid, we try to determine whether a person is  
11 secretor, or non-secretor.

12 A secretor is a person who we can determine  
13 their blood type by looking at other body  
14 fluids such as saliva, vaginal fluid, or seminal  
15 fluid. It is genetically determined by your  
16 genes called the Louis gene. Eighty percent of  
17 the population are secretors. That means if I  
18 took a person who is a secretor's saliva sample,  
19 I could get a blood type off that using various  
20 tests. A non-secretor is someone who does not  
21 have that gene, and who does not pass their  
22 blood type on to their other body fluids.

23 Approximately twenty percent of the  
24 population are non-secretors. So, if I took  
25 the saliva sample from a non-secretor, I cannot  
26 get a blood type off that. Those are the main  
27 genetic markers that we looked for in this  
28 particular case. There are others, too, that  
29 we look for nowadays, also.

Q Now, Mr. Warren, I would like to show you what I have

marked as State's No. 25. I would like to ask you if you can identify it, and if so, how can you identify it (indicating)?

A. This is a laboratory report that was issued in January of 1987 concerning an aggravated rape that occurred sometime in 1986, I don't know exactly when. And this is a report with my laboratory results on it. I can identify it because my signature is on it, and the signature of our crime director at the time signed it, also, crime lab director.

Q. Would you also examine the second page, and identify it.

A. That is page No. 2 of my crime lab report.

Q. What does that report contain?

A. This report basically contains the evidence I received; when I received it; who I received it from; our laboratory number and the offense; the type of examination that was requested; the name of the victim; the name of the accused; a description of the evidence that was given to me. And it contains my laboratory results that I obtained after I performed the tests.

Q. Now, would you describe the evidence that you were given as per your report.

A. Yes, sir. On specimen No. 1 is listed as a crime laboratory rape evidence kit, which we obtained from the victim. This kit includes a known tube of blood. And that is obtained so I could find

1 out what genetic markers are present in our  
2 victim's blood. So, we know which one in this  
3 case she has.

4 Q Were you able to make any determination as to genetic  
5 markers?

6 A Yes, the victim is type B, blood type B with enzyme  
7 group PGM type 2-1. We also required, after  
8 taking known sample of saliva from the victim  
9 to see whether she is a secretor, or a non-  
10 secretor. In this particular case, the saliva  
11 revealed type B secretor activity, which means  
12 she is a secretor, and you could find the same  
13 in her blood type, type B, and her saliva, and  
14 her other body fluids.

15 We also obtained fingernail scrapings in  
16 the rape kit. Fingernail scrapings, we test  
17 basically for the presence or absence of blood.  
18 In this case, blood was found under the  
19 fingernails, but the analysis was insufficient--  
20 there was insufficient amount of blood for  
21 further analysis, which means all I can say is  
22 it is blood. I can't say anything else about  
23 it, whether it's human, or non-human, or whatever,  
24 but just enough to say blood was present  
25 underneath the fingernails. Whose blood, I  
26 don't know.

27 We also obtained a vaginal and rectal swabs.  
28 We test these for presence of seminal fluid.  
29 If seminal fluid is found, we then try to again



1 to isolate genetic markers. In this particular  
2 case, however, no seminal fluid was found in  
3 the vaginal or rectal swabs.

4 We also obtained vaginal smears, a test for  
5 presence of spermatozoa. We do this mainly to  
6 see where the sperm was present, and that is an  
7 indicator whether intercourse occurred or not  
8 prior to the examination. In this case, the  
9 vaginal smear was negative. So, there was no  
10 spermatozoa found on the vaginal smear.

11 Our second piece of evidence, we received  
12 specimen No. 2 on our report is a--it is  
13 described as a red colored plastic bag  
14 containing one black and gold button type shirt,  
15 medium size, with a red substance. One multi-  
16 color type jacket, brand name California Krust,  
17 size 38 with a red substance on it. And one  
18 gold color pantyhose.

19 Before I give the results of that, I do  
20 want to mention we obtained a rape kit from the  
21 suspect. The rape kit from the suspect basically  
22 contains known samples of the suspect's saliva  
23 and blood, and known samples of his pulled head  
24 and pulled pubic hairs so we could determine  
25 what genetic markers are present in the suspect's  
26 blood to see whether they are the same, or  
27 different from the genetic markers we might  
28 isolate in this case.

29 The suspect was found to be blood type O.

1 Blood type O with enzyme groups PGM type 1. We  
2 analyzed saliva and we could find no blood  
3 typing present which indicates the suspect is  
4 a non-secretor.

5 Q Now, can I stop you there for a few moments--I will  
6 allow you to continue afterwards.

7 Was the suspect's blood type the same as  
8 the victim's?

9 A No, sir, the victim, as I said before, was type B,  
10 PGM type 2-1. The suspect was a type O, with  
11 PGM type 1. Based on those two markers, I was  
12 able to discriminate between the suspect and the  
13 victim's body fluids that may have been found  
14 with this case.

15 Q Would you continue with your report--

16 A Yes, sir.

17 Q --and evidence.

18 A Yes, sir. We examined the clothing, which I detailed  
19 earlier, from specimen No. 2. And the results  
20 were that an analysis of the jacket and  
21 pantyhose from specimen No. 2 revealed the  
22 presence of human blood with blood type O. This  
23 is the same as in specimen No. 9, which is a  
24 known tube of blood from the suspect. We also  
25 did enzyme analysis, but did get inconclusive  
26 results. Inconclusive means they were non-  
27 readable. There is various ways that could  
28 happen, either it had degraded somewhat, or  
29 some substance, such as bacteria, or perhaps

1 substance with the clothing interfered with the  
2 examination. Something we could not get any  
3 enzyme types from those blood samples. We did,  
4 however, say it was human blood which was type  
5 O blood, which was the same as the suspect's.

6 We also analyzed the shirt from specimen  
7 No. 2. And that revealed human blood to be  
8 present with blood type B. And enzyme group  
9 PGM type 2-1. These are the same genetic  
10 markers as are found in the victim's known  
11 blood sample.

12 Q Was there any determination of the suspect's blood  
13 type in that article of clothing you examined?

14 (A) As I said before, on the jacket and pantyhose, type  
15 O blood was found to be present.

16 Q And the blouse?

17 A It was type B blood, enzyme type 2-1.

18 Q Did you--was there any other evidence submitted to  
19 you for analysis?

20 A Yes, sir, there was a vial containing green carpet  
21 from the rear floor board of the accused's  
22 vehicle. And they gave a description of the  
23 vehicle, 1979 Chrysler Cordoba, with Louisiana  
24 License Plate, there is no reason to read the  
25 plate number, but it's 783B159, 1987. We  
26 obtained a vial containing vacuumed debris from  
27 rear floor board of the accused's vehicle.  
28 And I will talk about that a little later.  
29 Mostly look for hairs. And I would like to talk

about those a little later. I prefer to get through the body fluids stuff right now so we have that all together.

We received a--No. 6 is a one brown Knee-hi sock found on rear floor board of the accused's vehicle. And No. 6 failed to show any stains at all. There is no blood or no seminal fluid found in No. 6.

No. 7, we received six rags. There were four wash rags and two towels that were found under the seat of the accused's vehicle. My analysis on specimen 7 revealed two types of stains. One type was the presence of human blood that revealed blood type B activity to be present. Again, this is the same as the victim's blood. The second stain was seminal fluid, spermatozoa; secretor status was inconclusive. We failed to obtain a secretor status. We did enzyme analysis on it and the enzyme analysis revealed PGM type 1. That is the same enzyme as found in specimen No. 9, the victim's--excuse me, the accused's genetic markers. I will go over that one more time.

Analysis of one of the rags, specimen No. 7, revealed human blood with blood type B. Enzyme analysis was inconclusive. Blood type B is the same type as found in the victim's blood. We also found seminal fluid, spermatozoa. Secretor status was inconclusive; however,

Δ is non-secretor  
how can Dr. determine  
PGM type?

1 enzyme analysis revealed presence of PGM type  
2 1, which is the same enzyme as found in the  
3 suspect's blood.

4 We also had evidence No. 8, which is one  
5 lady's shoe, tan in color, brand, Naturalizer.  
6 On the shoe we found human blood with type B,  
7 and type O activity to be present. This is the  
8 same types as found in type--in the victim's  
9 blood and also the suspect's blood. However,  
10 from that piece of evidence, I can't say whether  
11 again whether or not--it is quite normal for  
12 people with type A blood, or type B blood to  
13 also show type O blood activity. And there is  
14 a basic biological reason for that. Everyone  
15 who is type A, or type B was born with what we  
16 call type O. And as you get older, the  
17 development of the fetus, that type O blood  
18 gradually changes to either A, or B, depending  
19 on what gene you have.

20 However, you always have some residual O  
21 in you. So, in that case, I can't tell whether  
22 that type O activity came from a person who is  
23 type B, and just showed some type O left over,  
24 or whether we are dealing with blood from a  
25 blood type B individual mixed with blood from  
26 type O individual.

27 Q Now, that was on the shoe?

28 A This was on the shoe, correct.

29 Q But did you incur those other problems with your

analysis of the other items?

1  
2 A. No, sir.

3 Q. Now, what I would like to do at this time is show you  
4 what has been marked as State's exhibit 12, 13--

5 A. Excuse me, before we go into that, can I finish my  
6 analysis--

7 Q. Yes.

8 A. I did analyze article No. 3, vial of carpet, article  
9 4, vacuumed debris, and article No. 5, a white  
10 hair barrett found under the seat of the  
11 accused's vehicle. I was not able to come up with  
12 a conclusive analysis of the hair comparison.  
13 Hair comparisons are basically through  
14 microscopic examination with known samples of  
15 victims, known samples of suspect's hair with  
16 your evidentiary samples. However, because of  
17 the victim and the suspect had hair that looked  
18 very similar, at least to me under the  
19 microscope, I could not differentiate between  
20 the two. Therefore, I could not come to no  
21 conclusions at all as to whether foreign hairs  
22 were found or not of different people.

23 Q. Now, you say there was a similarity in the victim's  
24 hair--

25 A. Yes, sir, they looked too much alike, the victim's  
26 and the suspect. I could not really  
27 differentiate between the two.

28 Q. Have you encountered this before, insofar as hair  
29 analysis?

1 A. Yes.

2 Q Is this attributable to any particular characteristic?

3 A. In this case, both--I believe the victim and the  
4 suspect are both black. A lot of times you do  
5 find a bit more similarities between black than  
6 you do between two different Caucasians.  
7 However, hair analysis is not something--I can't  
8 give exact figures on that. It is something  
9 that I could say someone's hair is similar, I  
10 can't say it is that person's hair. And sometimes  
11 between two Caucasian people, if someone has hair  
12 similar to mine, for instance, the same color,  
13 the same texture, that may be difficult to  
14 differentiate. That is not an unusual problem.

15 Q Now, Mr. Warren, can you tell us are you familiar with  
16 DNA testing?

17 A. Yes, sir, that is what I have been doing for the last  
18 year at the med school. I work for DNA testing.  
19 I also testified in front of Louisiana  
20 legislature, their subcommittee on crime. I  
21 was recognized as an expert in DNA.

22 Q What was your reason for testifying before the  
23 legislature?

24 A. The State was interested in--

25 MR. O'NEILL:

26 That is not relevant. We don't need to  
27 hear that. That is not relevant to this case.

28 MR. GREEN:

29 Your Honor, I think the question of DNA has

1                   been raised. I would like the opportunity for  
2                   our expert to testify as to his knowledge of  
3                   this at this time.

4                   THE COURT:

5                   All right. There was a question asked of  
6                   the previous witness. Answer the question, sir.

7                   THE WITNESS:

8                   The State was interested--they wanted to  
9                   pass a bill to make it so that paroled sex  
10                  offenders could have their blood drawn for DNA  
11                  analysis, put in computer banks similar to what  
12                  they do with fingerprints, and also to perhaps  
13                  open up a statewide DNA testing laboratory. And  
14                  they called me in to provide expertise in just  
15                  what the DNA can, or cannot do.

16                  MR. GREEN:

17                  Q    Is there presently a statewide DNA testing laboratory?

18                  A    No, sir. There probably won't be until the State gets  
19                      some extra money.

20                  Q    To your knowledge, has DNA been used in any courts up  
21                      to this point?

22                  A    In paternity cases, yes, sir, we have--I have been  
23                      doing it for paternity cases in Louisiana right  
24                      now since October. We have worked several rape  
25                      cases for East Baton Rouge Parish, district  
26                      attorney's office. But they have not gone to  
27                      court yet in criminal cases.

28                  Q    Was this available to you when you did the testing  
29                      in this matter?



1 A. In 1986, no, sir, it was not available, not in the  
2 United States.

3 Q. Not in the United States?

4 A. No, in England they had just started to using it,  
5 Dr. Jeffers (phonetically).

6 Q. I would like to show you at this time what I have  
7 marked as State's exhibit 12, 13, 14, 18, and  
8 26. And although I realize that I am about to  
9 hand you an arm full of things, I'm going to do  
10 so individually in the order in which I gave  
11 you the numbers.

12 I would like for you to state whether you  
13 can identify these items, whether or not you  
14 have ever seen them before; how it is possible  
15 for you to determine that you have seen them  
16 before, and how did you come about seeing them  
17 before, if you have.

18 A. This is State's exhibit No. 12 is listed as specimen  
19 No. 2, black and gold shirt and blouse. Yes, I  
20 recognize my initials, J.W. on the collar of  
21 the shirt. Here is where I took someone's  
22 cutting from the stain I found on the shirt  
23 (indicating).

24 Q. And this was one of the items that you analyzed, is  
25 that correct?

26 A. Yes, sir, according to my laboratory report, this  
27 specimen here, State's No. 12 is listed as  
28 specimen No. 2.

29 Q. And what were your results on specimen No. 2?

1 A. On the black and gold shirt, specimen No. 2, that was  
2 human blood with a blood type B, PGM type 2-1,  
3 same genetic markers as that of the victim.

4 Q. And State's exhibit No. 13, would you identify it,  
5 please.

6 A. Thirteen is also part of exhibit No. 2, which is the  
7 gold color pantyhose. Again I see what is my  
8 initials on this (indicating). I see a little  
9 hole where I cut the stain out to use for my  
10 testing. And on this particular piece of  
11 evidence, this was found to be human blood with  
12 blood type O, the same as the accused blood  
13 type. And enzyme analysis was inconclusive,  
14 however.

15 Q. State's exhibit No. 14.

16 A. Fourteen is listed as a specimen No. 7 on my report.  
17 And that is six rags that were obtained under  
18 the front seat of the accused vehicle. My  
19 initials on the rags, cuttings I made from one  
20 of the rags. And on this, we found both human  
21 blood and seminal fluid that contained sperm.  
22 The human blood was blood type B. The activity--  
23 B activity was found. This is the same as found  
24 in specimen No. 1, the victim's known blood.  
25 Enzyme analysis, however, was inconclusive.  
26 The seminal fluid, we could obtain no secretor  
27 status from it. However, in seminal analysis  
28 showed PGM type 1, the same as found in the  
29 known blood of the suspect.

1 Q You stated earlier that the suspect, Willie Jackson,  
2 was not a secretor, is that correct?

3 A. That is correct.

4 Q And the victim was a secretor?

5 A. That is correct, yes.

6 Q Now, State's exhibit No. 18.

7 A. Eighteen is a multi-colored jacket. It is listed  
8 again as part of specimen No. 2. And I see my  
9 initials on it, and here is where I took some  
10 cuttings (indicating). Here is where I took  
11 some cuttings. This particular one, the multi-  
12 colored jacket, revealed human blood with blood  
13 type O, same type as the accused. However,  
14 enzyme analysis was inconclusive.

15 Q Finally, State's exhibit No. 26.

16 A. No. 26 is listed as specimen No. 9 on my report.  
17 No. 22 should have been specimen No. 8. One  
18 lady's shoe. This looks either like a--this  
19 says "lady's shoe, tan in color." It's either  
20 a 7 or a 9. But I do see my initials on this  
21 (indicating). And according to my lab report,  
22 a lady's shoe, tan in color, Naturalizer brand  
23 was found to contain human blood with blood  
24 types B and type O activity to be present.

25 Q So, on that one you found both blood types to be  
26 present--

27 A. Yes.

28 Q --is that correct?

29 A. Yes.

1 Q Now, Mr. Warren, getting back to the rape examination  
2 kit, and your analysis, were you--you stated  
3 you were unable to detect the presence of  
4 seminal fluid, is that correct?

5 A. That is correct, yes.

6 Q Did that in any way lead you to conclude that a rape  
7 had not been committed?

8 A. The only conclusion, it's not up to me--

9 MR. O'NEILL:

10 Objection, Your Honor. I don't think that  
11 is in his field of expertise. He is a biologist.  
12 And now due to the absence of seminal fluid to  
13 say whether a rape did or did not occur, I  
14 think that is a conclusion for the jury, not  
15 him. He's not qualified to say.

16 MR. GREEN:

17 I did not ask him that, Your Honor. I  
18 asked him did it lead him to conclude that.  
19 It's just a yes or no answer.

20 THE COURT:

21 That is an opinion that is not part of  
22 his--his specialty. And I'm going to sustain  
23 the objection.

24 MR. GREEN:

25 Q Did you perform any other tests, Mr. Warren?

26 A. No, sir, not according to this report, no other tests  
27 that I performed.

28 Q Were any other conclusions found as part of your  
29 report, or your analysis that you have not

1 informed the Court of?

2 A. No, sir.

3 Q That is your complete report?

4 A. That is my complete report, yes, sir.

5 MR. GREEN:

6 Thank you, I have no other questions at  
7 this time. Would you answer Mr. O'Neill's  
8 questions.

9 MR. O'NEILL:

10 May I approach the Bench?

11 (Discussion off the record at the Bench.)

12 THE COURT:

13 This seems to be the appropriate time to  
14 recess. Mr. O'Neill indicates that he will be  
15 quite a while on cross examination. There might  
16 be re-direct examination. We're going to break  
17 now until 1:15.

18 (Whereupon, a luncheon recess is taken.)

19 (The jury is removed from the courtroom.)

20 AFTERNOON SESSION

21 (The jury is returned to the courtroom.)

22 (Joseph Warren is returned to the witness  
23 stand.)

24 CROSS EXAMINATION

25 MR. O'NEILL:

26 Q Mr. Warren, I'm Phillip O'Neill, attorney from Gretna.

27 A. Yes, sir.

28 Q Mr. Warren, at the time that you conducted these tests  
29 you were in fact a member of the Jefferson

1 Parish Sheriff's office, is that correct?

2 A. That is correct, yes, sir.

3 Q And you would be what is known as a forensic chemist?

4 A. Forensic biologist is my official title.

5 Q Although you are not a regular police officer who

6 drove around with a badge and gun, you worked

7 for that office?

8 A. That is correct.

9 Q It's your testimony to the ladies and gentlemen of the

10 jury that as a forensic biologist you conducted

11 these tests very professionally and very

12 carefully, isn't that correct?

13 A. Yes, sir, I tried to do the best job possible.

14 Q And, of course, you are school trained, and a number

15 of years of experience?

16 A. That is correct, yes, sir.

17 Q In fact, even from your testimony you have gone on to

18 what seemed to be future, larger responsibilities?

19 A. That's correct, yes, sir.

20 Q Now, after you conducted the tests on the swab, the

21 anal swab, okay, was it--and I'm referring to,

22 if you will excuse me, to the rear portion of

23 this lady, it was your conclusion then that there

24 was no spermatozoa, and in fact, no seminal

25 fluid to be found on that swab taken from her

26 anal orifice, is that correct?

27 A. That is correct, yes, sir.

28 Q Okay. Nothing whatsoever?

29 A. That is correct, yes, sir.

1 Q Now, sir, can you tell the ladies and gentlemen of the  
2 jury what kind of test that was--was it  
3 microscopic, or was it just a chemical reagent?

4 A Both. There were two types of tests we do. The first  
5 test is a screening where we look for an enzyme  
6 that is found in higher concentrations in seminal  
7 fluid, other body fluids. It's a simple chemical  
8 test, the enzyme is present, the reagent, or  
9 chemical we add to an extract taken from a  
10 suspected stain, or vaginal, or rectal swab, will  
11 turn a deep dark purple color in thirty seconds,  
12 or less. If it turns a pink color, or a light  
13 purple color in a minute or more, it's a false  
14 positive. Or if it doesn't change color at all,  
15 there's nothing to be found. At that point I  
16 say no seminal fluid is found.

17 If, however, I get a positive result, I  
18 then go on to do conformatory tests, to do tests  
19 to make sure there is seminal fluid. And there  
20 are two types of tests I do. First I try to make  
21 a microscopic examination whereby I look for the  
22 presence of spermatozoa under a microscope.  
23 It's a fairly simple test. I take the extract  
24 of the stain, or the vaginal swab, or rectal  
25 swab. I will extract it in a solution of saline,  
26 salt water with the same salt concentration as  
27 your body has. It is called a saline solution.  
28 And I will then take a small portion of that and  
29 put it under a microscope, put it on a slide, let

1 it dry. And I will then add two types of stain.  
2 The first type will stain the chromosome  
3 material found at the head of the sperm red.  
4 The second type will stain the fatty material  
5 and the proteins found in the tail of the sperm  
6 green. So, it is commonly known as Christmas  
7 tree stain.

8 Sperm has a very definite morphology.  
9 Morphology is seeing how something looks under  
10 a microscope. Someone who is trained properly  
11 can look at the sperm stained in a specific  
12 manner and tell right away whether it is present  
13 or not.

14 The presence of sperm is a definite  
15 indicator that seminal fluid is there, and it  
16 indicates, let's say a rape kit, that at least  
17 some type of sexual activity occurred prior to  
18 that test being taken. However, if I do get a  
19 positive on a presumptive test, test for any  
20 seminal fluid, stain will turn purple, but no  
21 sperm, that still might mean seminal fluid is  
22 present, it just means the sperm might have been  
23 graded, or perhaps the male seminal fluid, it  
24 doesn't produce sperm either through some sort  
25 of disease process, or through vasectomy, or  
26 something. So, at that point, I will then look  
27 for other proteins that are specific for sperm,  
28 or specific for seminal fluids, but not found  
29 in other fluids. So, those are the three--for



me to call something seminal fluid or not, it has to pass two out of three tests.

In this particular case, all I needed to do was I looked at the presumptive test, and both the vaginal swab and the rectal swab. There was no change of colors whatsoever which showed me--which told me that no seminal fluid was present. There was also some vaginal smears given to me to look under the microscope for sperm. And I found no sperm present on those.

Q That was my next question, Mr. Warren. What I would like to ask you in reference to the test, or series of tests that you performed in reference to the anus, does that qualify under a specific name? Is this a form of the colormetric examination that has a particular name that was--

A. Yes, the test performed on the rectal swab was looking for the presence of an enzyme called acid phosphatase. We used the chemical which I make up. It consists of several other chemicals. It is called acid phosphotase reagent.

Q And basically this is a colormetric examination where it will change color?

A. It changes color from colorless to deep dark purple in thirty seconds, or less.

Q If you will permit me to shift focus to the front of the vagina. You performed the same series of tests?

A. That is correct, yes, sir.

1 Q And your conclusions were the same, you found  
2 absolutely no sperm, or no seminal fluid  
3 whatsoever?

4 A That is correct, yes, sir.

5 Q Now, Mr. Warren, could I ask you this: In reference  
6 to the test performed on the vagina, in your  
7 experience as a forensic biologist, how many of  
8 these tests would you have performed?

9 MR. GREEN:

10 Your Honor, I'm going to object to the form  
11 of the question. He states in reference to--as  
12 I understand it, or recall, the examination  
13 performed on the vagina, is that what you--

14 MR. O'NEILL:

15 The form of the question--he's an expert,  
16 this is cross examination. And he can be led.  
17 I don't see what is wrong with the question.

18 THE COURT:

19 As I understand the question, Doctor, he  
20 wants to know how many types similar to the ones  
21 you testified about you have performed. Is that  
22 what you want?

23 MR. O'NEILL:

24 Sure. I want to know how many of these he  
25 has done. Is this the first one he ever did, and  
26 could he be wrong.

27 MR. GREEN:

28 Are we referring to the examination?

29 THE COURT:

1 No, not the examination, the tests.

2 MR. O'NEILL:

3 The kind of tests he run.

4 THE COURT:

5 The same thing he has been testifying about  
6 today.

7 THE WITNESS:

8 That is a hard--over the past five years,  
9 I have been doing this, and this occurred in  
10 1986. So, I'm doing it a little over two years  
11 at the time. To give an exact answer, I can't  
12 do that. We average approximately between 100  
13 and 250 rape cases per year in Jefferson Parish.  
14 And each rape case could have anywhere from one  
15 to I have had as many as fifteen pieces of  
16 evidence, quite a few I would say, a couple of  
17 thousand, anyway.

18 MR. O'NEILL:

19 Q Thank you. Now, Mr. Warren, as a forensic biologist,  
20 you, of course, are familiar with the term  
21 "motile sperm", is that correct?

22 A. That is correct.

23 Q. Would you tell the ladies and gentlemen of the jury  
24 what you understand about that.

25 A. Motile sperm basically is a sperm that is found that  
26 is still moving. It's still alive, basically.  
27 They look for it by microscopic tests, or they  
28 will take--in this particular case, in the case  
29 of a rape examination, the attending physician

1 will take a sample of the vaginal swabbing,  
2 sample of the vaginal material, and put it on a  
3 glass slide, probably again with the saline  
4 solution, and look under a microscope and see  
5 whether he could see the sperm swimming in the  
6 saline solution. This usually means--this means  
7 that the sperm is present, and is moving, and  
8 it is still alive at the time it is present.

9 Q Could I ask you this: Based upon your years of  
10 experience before this particular test was run,  
11 what is the average life of motile sperm?

12 A. Motile sperm, they have found it--it's not unusual  
13 to find it up to twenty-four hours. They have  
14 found it up to forty-eight hours. Sperm itself  
15 has been found up to five days after intercourse,  
16 but it's not motile at that point, it has  
17 already died.

18 Q Now, do you recall the test that you ran in reference  
19 to the head hair?

20 A. Basically, in my previous testimony was that what we  
21 do there, it's a microscopic examination. I  
22 will take a sample of the hair, put it on a  
23 microscope slide, and a mounting median like a  
24 glue, basically glue median. Of course, special  
25 properties for a microscopic examination, put  
26 another thin piece of glass right on top of  
27 that, and look under what is called a comparison  
28 microscope.

29 A comparison microscope is basically two

1 microscopes joined together so I could compare  
2 two individual articles side by side at the same  
3 time. And we looked again for the basic  
4 similarities among hair, microscopic similarities,  
5 things such as hair color, again the morphology  
6 of hair.

7 Hair, it has its own type microscopic  
8 anatomy. And I could basically look to see  
9 whether this hair is similar, or different. If  
10 it is similar, I could say it is similar, but  
11 I can't say whether it came from that person or  
12 not with respect to the general population  
13 because no one knows how many people have the  
14 same type hair. I can definitely say that hair  
15 is different.

16 In this particular case, like I said before,  
17 with my own personal opinion, professional  
18 opinion, that the hairs that the suspect had,  
19 the victim had just looked too much alike under  
20 the microscope for me to safely come up with any  
21 definite conclusion.

22 So, in that case because they shared some  
23 similarities, they also had some differences,  
24 it was too many similarities for me to feel  
25 comfortable with making an opinion on this other  
26 than an inconclusive one.

27 Q Let me ask you a hypothetical question, Mr. Warren.

28 If I were in fact the person who were accused  
29 in this case, instead of the lawyer, and my hair,

1 either from my head, or from my pubic area had  
2 been found on the body, let's say the vagina,  
3 and the pubic hair of the lady, Miss Short,  
4 would you then in fact be able to take a sample  
5 of my hair and compare it with the hair found  
6 in the pubic area and come up with a conclusion  
7 that I had in fact been the individual who--

8 MR. GREEN:

9 Objection, Your Honor, this is speculative.

10 MR. O'NEILL:

11 He is an expert, he can answer hypothetical  
12 answers.

13 THE COURT:

14 I don't think it's speculation. This is  
15 his job. He has testified as an expert. Go  
16 ahead.

17 THE WITNESS:

18 I could say in that case that if indeed I  
19 thought they were similar, I could say the known  
20 sample of hair given to me was found to contain  
21 similar microscopic properties to the evidentiary  
22 materials. I cannot say it came from you,  
23 though, directly, I can say it came from someone  
24 who has hair like you.

25 MR. O'NEILL:

26 Q But of course that is not the situation in this case  
27 at all, is it?

28 A That is correct, yes, sir.

29 Q Mr. Warren, can you explain to the ladies and gentlemen

of the jury what the known blood types are?

A. Yes, sir, the known type for the victim was blood type B with a PGM enzyme type 2-1. The known type of the suspect was blood type O with a PGM enzyme of type 1.

Q. Now, let me ask you this question: What are the known blood types in reference to all of the people that we--

A. Oh, there are four types. Type A, type B, type O, and type A-B.

Q. Yes, sir. Now, that is for human blood, correct?

A. That is correct.

Q. Now, if you know, and if you would, please, would you tell the ladies and gentlemen of the jury what percentage of the population has A blood?

A. Okay. Just again off the top of my head, among the white population, forty percent has A blood. Among the black population, about twenty-nine percent are type A.

Q. And do you have the statistics available for type B blood?

A. Again, off the top of my head, approximately nine to eleven percent, the white population is type B. Approximately twenty percent of the black population is type B.

Q. Because we're only interested in two others, let's skip down to the other ones. Would you give those percentages.

A. Type O is approximately forty-three to forty-five

percent in both the black and white population  
will have type O blood.

Q Would it be a fair statement to ask you then that the type O blood, which you have already said is not specific to Willie, could belong to any forty-three percent of the black population?

A That is correct, yes, sir, with type O.

Q And do you have any idea how many people that would be just in the United States of America?

A About two hundred fifty million people in the United States times .43. I don't have a calculator on me. But let's say three hundred million, rounded out, three hundred million times .4 is eighty million people, rounded off.

Q Thank you.

A Excuse me, one hundred twenty million, not eighty million.

Q I have been told by a lady that I know to whom I am married these are called pantyhose (indicating). You may know them as something else. Could you examine those.

A (Witness complies.) Okay. Again, I see my initials on it. And I see where I took some cuttings.

Q Okay. That is what I wanted to ask you, if you in fact were the one who had created this individual rip or tear, or whatever, this is your work?

A That is correct. The reason we do that is because if I find a stain, and it turns out to be a



human or any type of stain, biological stain, I try to cut that small portion off and freeze it right away so as to maintain the integrity of the stain as long as possible.

Q Could I ask you this, if you can recall, I'm indicating to you that--and I'm not exactly sure what portion this is, but in and around either--I don't know whether that is the front, or the back. Okay. But I'm showing to you, or indicating to you what may be a small hole. Do you recall whether this was ripped like that before you got them?

A. I'm sorry, sir, I would like to, but that is almost three years ago. I really don't recall.

Q Did you have an opportunity to examine this article, S12?

A. Yes, sir.

Q Okay. And I want to show you what purports to be this area right here (indicating).

A. That is correct.

Q Is this your work, you made this tear?

A. Yes, sir, I did, I made that.

Q Now, Mr. Warren, are you familiar with the concept as a forensic biologist in tracing examination on fiber particles?

A. Somewhat, yes, sir.

Q Were any fiber particles brought to you from the vehicle, or from any fiber particles from any place, but specifically any gleanings, or

1 cleanings, from the vehicle?

2 A. They brought a file containing green carpet from the  
3 rear floor board passenger side of what they  
4 identified as the accused vehicle, 1979  
5 Chrysler Cordoba, two-door, green in color,  
6 Louisiana License 783B159.

7 Q. Now, but no lint particles, or any fiber particles,  
8 or pieces of clothing that could be shown to  
9 come from this--let me ask you this: Do you  
10 in fact do any fiber particle examinations as  
11 part of your scientific evidence--

12 A. At the time at the Sheriff's office I was doing some,  
13 I don't do it any more.

14 Q. To your knowledge, was there any fiber particle  
15 examination on any of these items done by  
16 yourself?

17 A. If there was, it would have been in my report. And,  
18 no, I don't see any done, I see the hair  
19 examination, the biological fluid, but no fiber  
20 examination.

21 Q. Mr. Warren, would you be so kind as to explain to the  
22 ladies and gentlemen of the jury what fiber  
23 particle examinations--basically, the basic  
24 theory behind a lot of forensic in general is  
25 the theory of transferring materials from one  
26 object to another. In particular, fiber, it is  
27 transfer of fiber, let's say, from one article  
28 of clothing to another, or one source fiber to  
29 another source fiber to another source fiber such

1 as, again, carpet to clothing, clothing to  
2 clothing. Anything that could be--any type of  
3 fibers that can be transferred. What they do  
4 there is they will look at various fibers, look  
5 for various similarities. Again, known samples,  
6 and your evidentiary samples. There are various  
7 ways that could be done, again, microscopically,  
8 you look for color. You sometimes can tell  
9 what type of fiber it is through the microscope.  
10 There are also some chemical tests to do to say  
11 whether fiber is soluble, or insoluble, and  
12 various types of acid basis, and that will help  
13 you.

14 And it is also more sophisticated test  
15 is used nowadays that could help identify your  
16 fibers similar from one to another.

17 Q Thank you. Could I ask you to--if you can recall, or  
18 even if you would look at your notes, please.  
19 What was the product of your examination from  
20 the patch, or the swab, or the cutting taken  
21 from this item? This is--I think S13.

22 A. This is black and gold button--black and gold shirt,  
23 or blouse?

24 Q Yes.

25 A. Okay. That is known as specimen No. 2 on this report  
26 here. An analysis of shirt revealed human  
27 blood type B, with enzyme group PGM/2-1. And  
28 that was found to be the same as the victim's  
29 blood, same genetic markers as found in the

victim's blood.

Q Could I ask you this: On any of these fluids, whether it be seminal fluids, or whether it be enzymes, or whether it be body fluids such as blood, or vaginal fluid, are you able to date, to tell the time in which they would have been--

A Not directly. Now, there are--a lot of these enzyme markers, which I do look for, do have certain dates where after certain period of time you can no longer find them in the stain. Such as in this case, PGM, kept it at room temperature. PGM's usually degrade anywhere from four to eight weeks. So, in that, we could get a round figure as to age of stain, but not exactly, no.

Q Okay. Do you have these--I want to show you, this would be what would be referred to as some kind of a wash cloth, is that correct (indicating)?

A Yes, sir, that is correct.

Q And this would be the same thing. Was there anything taken from the two items?

A I see my initials on it, but I don't see any cuttings.

Q Now, how about this one (indicating)?

A No, sir.

Q It would be fairly characterized as a towel?

A I imagine so, yes.

Q That is kind of towel material. Okay. And nothing on these three (indicating)?

A That is correct.

Q Now, and this one is a larger white toweling (indicating)?

1 A. Yes, sir, that is correct.

2 Q. Okay.

3 A. And I believe this looks like probably had some  
4 cutting done along there (indicating).

5 Q. Now, these--let me ask you this: Okay, in questions--  
6 in reference to the longevity, these are items  
7 that would customarily be used in a bathroom,  
8 would that be correct, could very well be?

9 A. I imagine so, yes, sir.

10 Q. Now, and if--let me use myself again. If I had used  
11 these in my bathroom to bathe, one thing or  
12 another, wipe myself, washing myself, that sort  
13 of thing, and while doing that, I had deposited  
14 something on these cloths. How long would it  
15 remain on these cloths, if you know?

16 A. That is a tough question to answer because it would  
17 depend on what happened to the cloth afterwards.  
18 If you threw it in the corner, and stayed there,  
19 you could detect, let's say, the presence of  
20 blood several years after something had occurred  
21 and--

22 Q. I'm sorry, go ahead. I didn't mean to interrupt.

23 A. It depends what you're looking for.

24 Q. Let me say after I use these in my bathroom for a  
25 while, they are no longer, you know, suitable.  
26 I have other things, I put them in my car to  
27 wash my car with, and I wash my car with them  
28 occasionally. Would you still be able to find,  
29 let's say, after six months--

1 A. Under the conditions you described, that might be  
2 hard because you are washing it, and you are  
3 subjecting it to detergents that would wash off  
4 those stains, or at least wash them enough so  
5 we could not detect them.

6 Q. I understand, thank you.

7 I think this is S14 (indicating).

8 A. Yes, that would be the multi-colored shirt--multi-  
9 colored jacket.

10 THE COURT:

11 S14 was the wash rag.

12 MR. O'NEILL:

13 Thank you, Judge.

14 THE COURT:

15 Jacket is 18.

16 MR. O'NEILL:

17 Thank you, Your Honor.

18 MR. O'NEILL:

19 Q. Now, the jacket, is this your work (indicating)?

20 A. That looks like it, yes.

21 Q. Okay. Now, did you notice, or check any other rips,  
22 or tearing on the jacket?

23 A. I don't recall. And I don't have any notes to say  
24 whether I did or not.

25 Q. Could I ask you this: On the--from the jacket you  
26 took a cutting or a swab, and you found blood,  
27 is that correct?

28 A. That is correct.

29 Q. And it was type O?

1 A. That is correct, yes, sir.

2 Q. Okay. Now, from the testing, or from that cutting,  
3 could that blood by you be specifically  
4 identified as coming from the body of Willie  
5 Jackson?

6 A. I could say that it came from someone who had type O  
7 blood. Mr. Jackson has type O blood, and he  
8 could be one of the donators. Again, anyone  
9 with type O blood could be one of the donators  
10 on that.

11 Q. And that would be about eight million people?

12 A. No, I think we said out of two hundred fifty-five  
13 million people, it's .45, approximately one  
14 hundred twenty million, or something like that.

15 Q. One hundred twenty million people.

16 A. One hundred million, one hundred twenty million.

17 MR. O'NEILL:

18 Thank you, no further questions.

19 THE WITNESS:

20 That is without a calculator.

21 MR. O'NEILL:

22 Thank you, no further questions.

23 RE-DIRECT EXAMINATION

24 MR. GREEN:

just

25 Q. Mr. Warren, I have a few questions.

26 A. Sure.

27 Q. Now, hypothetically, as Mr. O'Neill stated earlier,  
28 if these cloths were used in a bathroom where  
29 perhaps body fluids came off a person's body and

1 on to these cloths, and were afterwards washed,  
2 or laundered in a normal manner, and then used  
3 to wash a car, would those body fluids remain  
4 in these towels?

5 A. They would be awfully difficult to detect. And insofar  
6 as the enzyme analysis goes, or the blood type,  
7 you would not detect that at all.

8 Q But you were able to detect blood types, presence of  
9 seminal fluid?

10 A. Again, according to my report on the towels, I found  
11 human blood, seminal fluid, and spermatozoa.  
12 Human blood was blood type B. Enzyme activity  
13 was inconclusive. On the seminal stain, blood  
14 typing, secretor status was inconclusive, but  
15 enzyme analysis did show PGM type.

16 Q Now, have you ever conducted such tests from the rape  
17 kit with regard to what you were asked earlier  
18 about the presence of sperm, and no sperm was  
19 found in the rape kit, or in your examination of  
20 that rape kit?

21 A. Yes, sir, I found that has happened several times  
22 where you get a rape kit, you don't find sperm  
23 or seminal fluid present.

24 Q So, that has happened in your experience?

25 A. That is correct, yes, sir.

26 Q Now, were your methods of testing given the same  
27 evidence that you tested in relation to this  
28 case have been any different, and would your  
29 conclusions have been any different had you not



been working for the Sheriff's office at that time?

A. No, sir.

Q. Now, with regard to the hair analysis, I believe you stated that the morphological, is that the word?

A. Morphological, right. It's a fancy term basically for how something looks under a microscope.

Q. You were unable to draw any conclusions?

A. That is correct.

Q. And what was the reason for that?

A. The hairs just looked to me to appear too similar, and not show enough marked differences where I could feel comfortable about making the exact call about whether foreign hairs were found or not.

Q. And this has happened before?

A. Yes, sir.

Q. However, you did find the same type blood as the suspect in the victim's pantyhose, is that correct?

A. I found type O blood, yes, sir, in the pantyhose.

Q. And that was the suspect's blood type?

A. Same type as the suspect, that is right, yes, sir.

Q. And you did find the same blood type in the jacket as the suspect's?

A. That is correct, yes, sir.

Q. And you did find the same blood type as the victim and the suspect in the shoe that you examined, is that correct?

A. That is correct, yes, sir.

1 MR. GREEN:

2 Thank you, Mr. Warren. I have no further  
3 questions.

4 Your Honor, at this time I would like to  
5 offer, file and introduce into evidence State's  
6 exhibit 14 consisting of the towels. State's  
7 exhibit No. 25, consisting of Mr. Warren's  
8 report. State's exhibit No. 26, consisting of  
9 the shoe that was examined and analyzed. And  
10 State's exhibit No. 17, the rape examination  
11 report by Dr. Eddington.

12 THE COURT:

13 Excuse me, that is 17?

14 MR. GREEN:

15 Yes, State's exhibit 17.

16 THE COURT:

17 That is Dr. Eddington's report.

18 MR. O'NEILL:

19 Your Honor, can I approach the Bench?

20 THE COURT:

21 Sure.

22 (Discussion off the record at the Bench.)

23 THE COURT:

24 Okay. Go back on the record. I'm going  
25 to allow the evidence in, State 13 and 14.  
26 State 12 was already introduced into evidence,  
27 was it not?

28 THE CLERK:

29 Yes, sir, it was.

1 DR. ROBERT EMMETT BARSLEY, 6027 West End  
2 Boulevard, New Orleans, Louisiana, was called as a witness,  
3 and after having first been duly sworn, was examined and  
4 testified on his oath as follows:

5 MR. GREEN:

6 Your Honor, previously when Dr. Barsely  
7 was called to testify, we stipulated that he was  
8 qualified as an expert in the field of forensic  
9 dentistry and forensic odontology. I would  
10 like at this time to see if it is necessary to  
11 requalify the doctor.

12 MR. O'NEILL:

13 No.

14 THE COURT:

15 No, I think the objection was made not to  
16 to  
17 the forensic odontology, but/the bite mark  
18 analyzation process. But I overruled that  
19 objection. So, he can proceed.

20 MR. GREEN:

21 Thank you.

22 DIRECT EXAMINATION

23 MR. GREEN:

24 Q Dr. Barsley, did you do a comparison of the bite  
25 marks found on the victim, Beverly Short, and  
26 the defendant, Willie Jackson's teeth?

27 A. Yes, sir, I did do a comparison between the photo--

28 MR. O'NEILL:

29 Excuse me, Your Honor. Can I approach  
the Bench? He is back again, but he doesn't

1 get to repeat everything he said before.

2 THE COURT:

3 No, no, we're going--he is going to go  
4 forward with the evidence.

5 MR. O'NEILL:

6 That question has already been asked and  
7 answered at least three times. Of course,  
8 everybody knows he made the comparison. He has  
9 asked that question three times. We need to get  
10 to what he is going to testify to today.

11 THE COURT:

12 He is on his way there, go ahead, Alan.

13 MR. GREEN:

14 Thank you, Your Honor.

15 MR. GREEN:

16 Q Dr. Barsley, I will be as brief as possible. Would  
17 you explain how that was done.

18 A Yes, sir, I will try to explain some of the things  
19 I had to leave out yesterday.

20 Q Is it necessary that--

21 A Yes, sir, I think the slides should be on.

22 MR. GREEN:

23 Your Honor, at this time, I would request  
24 that Dr. Barsley be allowed to use what we will  
25 number as State's exhibit No. 27, which is a  
26 model, or mold that was taken.

27 THE COURT:

28 Let's let him explain it.

29 MR. GREEN:

And No. 28, which consists in globo of nineteen slides, or photographic slides.

MR. GREEN:

Q Now, would you, Dr. Barsely, proceed to inform the Court how this comparison and analysis was done.

A Yes, sir, I will need the lights off when the slides are on.

(Discussion off the record.)

(At this time the slides are shown.)

THE WITNESS:

When I was approached to analyze this case, I was shown a series of photographs, one of which you saw yesterday. These are the two photographs that were most important (indicating). The bottom photograph was the same, depicts the same instance as the top photograph; however, the ruler that is in the picture, the longer ruler which is actually in the picture is not present to show there are no other marks that have been hidden, or obscured by the ruler. And as I stated yesterday, this top photograph is shown to be a one to one life size representation of the victim's back. This, of course, on the wall is much larger than the actual photograph, as an exact science.

Then I had Mr. Jackson brought to my office. And Mr. Jackson came in and, as I stated yesterday, he cooperated with us to take

1 impressions of his mouth, take photographs of  
2 his teeth, photograph of Mr. Jackson. Took a  
3 photograph of Mr. Jackson opening his mouth to  
4 show that he could open his mouth. I questioned  
5 Mr. Jackson about the history of the dental  
6 work. He informed me that the gold work you see  
7 on his teeth has been there for over eight years  
8 at that time. And that he had no painful teeth.  
9 He had a back tooth extracted about four or five  
10 months earlier.

11 And I tested all of his teeth by trying to  
12 shake them and none of them were loose, or  
13 painful to him when I did that. I also took a  
14 photograph of the front of Mr. Jackson's teeth.  
15 And I want to point out two or three teeth that  
16 are important here.

17 No. 1, this gold crown (indicating). This  
18 is an actual tooth, just like the other teeth,  
19 but the tooth has a gold covering placed on top  
20 of it. You will see that again later.

21 And these two teeth here on either side of  
22 the front teeth are not true teeth, they are  
23 false teeth attached to these gold crowns that  
24 are on either side of this (indicating). And  
25 I want you to note carefully this little jagged  
26 hole in this upper crown right here (indicating).  
27 We will come back to the importance of it later.

28 This also is a picture, as if I were  
29 sitting on Mr. Jackson's tongue. This picture

1 was taken in a mirror. And this is the back  
2 side of Mr. Jackson's upper teeth (indicating).  
3 Again, you can see this false tooth which is  
4 suspended (indicating), and you can see this  
5 other false tooth which is suspended from this  
6 tooth. Again, you can see that piece is missing  
7 in this gold crown.

8 This gold crown should be like all the  
9 others. He had a complete gold coverage, but  
10 over the years Mr. Jackson has bitten on this,  
11 he has worn through that. You can also see a  
12 small chip in the front tooth (indicating).  
13 This chip is not important in this case.

14 I was unable to obtain any good photographs  
15 of his lower teeth because his tongue was in  
16 the way. We couldn't keep that out of the way.

17 We then took an impression, a dental mold  
18 of Mr. Jackson's teeth. And this happens to be  
19 the lower. I have the actual mold in my hand.  
20 I think this is what you want to enter as  
21 evidence.

22 MR. GREEN:

23 Yes, Your Honor, that would be State's  
24 exhibit No. 27.

25 THE WITNESS:

26 These models were made from an--these  
27 dental models were made from alginate, or  
28 hydrocholoid, impression material that  
29 reproduces the things that are in your mouth,

teeth, tissue, gums, everything that it touches. These are poured up in the dental stone and these were now a faithful reproduction of Mr. Jackson's teeth.

MR. GREEN:

Q By "faithful reproduction", what is meant, Doctor?

A. They are accurate.

Q Thank you,

A. If you will notice the model, I have taken a picture from the outside bottom. It shows a few things that become important here. One of his front middle teeth has a little jagged edge there. Another one has a small jagged edge there. There is some spaces between his teeth (indicating). Spaces between this tooth and this is that gold tooth that you saw in the picture. It doesn't have any jagged edge. It is smooth across the top. It's a little bit bold, or pointed, but it <sup>is</sup> generally smooth.

Looking down on these same teeth, as if I were sitting on top of them, again this gold crown which now has reversed itself, it is now up, this is the same tooth (indicating). You can see the top biting surface of that tooth is generally smooth. The top biting surface of these other teeth have some minor aberrations.

And the two eye teeth, this one and that one (indicating), have a roughly trapezoidal



outline, roughly trapezoidal triangle. This is that same exact picture that you saw yesterday. We tried to relate those teeth on the bottom to these marks (indicating).

Now, this mark is on Miss Short's back, about mid-back. And as I said, her back bone runs right down here (indicating), just off the side of this picture, as if he was behind her and had bitten her.

Now, again this is the model taken just laid up along side of the pictures. And, of course, we did some things like measure the distance between this point and that point (indicating), and the same point on these teeth. We could see that the general curvature of the teeth was the same. And what has to be done here, this model has to be flipped over as if it were actually the jaw biting on this picture. And we also had taken--Mr. Jackson bit into a piece of styrofoam for me, and made indentations in the styrofoam that would represent his teeth. And I was able to trace the marks that these teeth would have made, in my opinion, had he bitten a piece of styrofoam. So, I can take this piece of clear plastic and use it to lay over this picture, if I have to.

I also colored in the one that is gold as a solid piece to differentiate it for you and myself because it will make a more solid mark.

1           We are able to slide this piece of plastic  
2 on top of that same picture again (indicating).  
3 These are still one to one, looking to see which  
4 one would have made this kind of mark.

5           Now, this is not exactly on top because I  
6 backed it up to show you if we slide this  
7 plastic down a few millimeters, these teeth  
8 would cover those marks. As I said yesterday,  
9 someone moved when this happened. The victim  
10 might have moved, or the biter moved so that the  
11 teeth drag, or skipped across the skin. Again,  
12 the skin is pulled taut, it's not a flabby area.

13           You can see moving down, these would cover  
14 spots (indicating), and the teeth that had  
15 rough parts that are represented here by the  
16 jagged front edges left stripes. And the tooth  
17 that is solid left a more diffuse bruise. And  
18 you can see these teeth hit and drag backwards  
19 (indicating).

20 Q    Would those stripes be the striations?

21 A    Yes, the stripes are the same things I called  
22 striations yesterday. I'm looking for a better  
23 word, and I haven't come across one.

24           Now, what I have done in a series of  
25 pictures, and again this is still done on top  
26 of the picture which we have in evidence with  
27 the model which I have in my hand. I'm going  
28 to slowly position this model until it covers  
29 up these marks. And again you can see spaces

1 where there are no teeth. And there is a space  
2 in the mark (indicating). And there is a space  
3 between here, space there (indicating). This  
4 is that gold tooth. Again, our same old solid.  
5 It looks rough. Diffuse bruise there (indicating).  
6 And this is the tooth that is going to cover  
7 that mark there, today.

8 Had we done this yesterday, and had this  
9 available, the victim's body available, or the  
10 skin available, we could do this on the video  
11 camera and show you. But at that time it was  
12 not available,

13 I am going to slowly advance that model  
14 with my hand on to those marks, seeing that  
15 everything stays exactly the same. The spaces  
16 remain, and the striations remain. After about  
17 two more pictures it is going to completely  
18 occlude, or cover up those marks. And that was  
19 a little dull, I didn't hit it very well  
20 (indicating). But it will completely cover up  
21 those marks.

22 Now, again, you will see an additional  
23 mark out here, and out here (indicating). This  
24 is where the first contact was made, when he  
25 first bit her. This is almost as if he had  
26 thrown his jaw at her. It's that kind of a  
27 bite.

28 Like I said yesterday, you cannot bite your  
29 arm and make these marks appear. It's much

harder impact than that.

Again, this is the one I showed a second ago. This is already covered up and I am sorry the picture is dark. And I pulled it back off. Again, under different lighting it shows that the spaces between the marks is consistent in every way with the marks on Mr. Jackson's teeth. And up in here that was left because of that cut, this one--

THE COURT:

Would you speak a little louder. We can barely hear you.

THE WITNESS:

I'm sorry. This one you can see here where the mark has faded out because the little piece is lower here (indicating), less tissue than we had in there.

We had taken a picture from the side. Again, this is still the bottom. Her head would still be up here. And I have shown if you drag this cast over a few millimeters, you can see that each of these teeth would fill exactly the marks (indicating).

And the last thing I have to show is something I cannot demonstrate in the same way. And this is what convinced me a hundred percent. There is--this is that  crown  I showed you, the  bridge, the false tooth  (indicating). This picture is taken in the mirror. You can see the

mirror (indicating). This is the tooth that was  
over here. So, it would be Mr. Jackson's left  
canine. This is the piece that is worn away.  
When he bites down, the lower tooth has bitten  
through the gold, worn a hole into the gold and  
has made this little depression right there  
(indicating).

When you look at--when you--now again, we  
go back. This is taken in the mirror. And this  
is shown so that if I could lay this--if this  
were a transparent picture, I could lay it  
exactly on top of the picture that I'm going to  
show you next. So, I could lay this tooth on  
top of every one. This tooth will show a mark  
on the top of this tooth and tip of this tooth,  
and the tip of this tooth (indicating), which I  
cut off out here, will show a mark.

The top of that big gold tooth fell right  
there. And there is a little depression in that  
clear area that I pointed to yesterday right  
there (indicating), that area where there is no  
gold, and that tooth is showing through was not  
impressed as hard, and made a spot into the  
skin.

On this side there are three teeth that I  
showed you, one, two, three. And then the  
second part of that last tooth hit and skidded.  
And this is the way that people, when they do  
biting, their jaws do slide across the skin like

1 that (indicating). That is how I did this, that  
2 was available to me.

3 MR. GREEN:

4 Q Doctor, what were your conclusions as a result of  
5 those tests?

6 A. My conclusion is that Mr. Jackson is the person who  
7 bit this lady.

8 MR. GREEN:

9 Thank you, would you answer Mr. O'Neill's  
10 questions.

11 THE WITNESS:

12 Sure.

13 CROSS EXAMINATION

14 MR. O'NEILL:

15 Q Doctor, can we turn the lights on?

16 THE COURT:

17 Do you have to ask him questions about the  
18 slides?

19 MR. O'NEILL:

20 Just one.

21 THE COURT:

22 I know, but do you--we have to turn the  
23 lights off <sup>if</sup> you want to put the slides back on.

24 MR. O'NEILL:

25 Your Honor, I hate to ask people questions  
26 when I can't see them.

27 THE COURT:

28 Go ahead.

29 MR. O'NEILL:

1 Q Dr. Barsley, let me introduce myself. I am Phillip  
2 O'Neill.

3 A Yes, sir.

4 Q Dr. Barsley, have you ever spoken to this lady in the  
5 last few days?

6 A I spoke to this lady about one minute ago in the hall  
7 where--one minute before I walked in the court,  
8 she happened to be in the hallway. And I was  
9 introduced to her. That is the first time I  
10 ever met her.

11 Q Have you ever been told by anybody who knows anything  
12 about this case that when she was bit, she moved?

13 A No, sir.

14 Q If I told you that she got off the witness stand for  
15 forty-five minutes to an hour, and she said she  
16 fought bitterly, but that she never said she  
17 moved when she was bit. You would still  
18 contradict her testimony?

19 A I don't believe I contradicted her testimony. I also  
20 mentioned that the biter could have moved,  
21 besides the victim. Either could have moved.

22 Q Now, if I told you that I asked this lady, Miss Short,  
23 about the mouth and the lips of the man. And  
24 she never identified, or even mentioned the man  
25 who attacked her had gold teeth. That still  
26 would not change your testimony?

27 A It would not change my testimony, no, sir.

28 Q You are right regardless of anything, is that correct?

29 A My opinion is that these teeth bit this lady.

1 Q Nothing is going to persuade you--  
2 A No, sir, I am convinced.  
3 Q Not even the testimony of the witness?  
4 A I have never heard the witness's testimony.  
5 Q Let me ask you this: Since you were here last, have  
6 you ever had a chance to talk to the photographer?  
7 A No, sir, I did not have time today to talk to the  
8 photographer.  
9 Q Didn't have time?  
10 A I was too busy today to talk to him. I wasn't aware  
11 I was going to return, actually.  
12 Q When you made your slides, Doctor, you had your camera  
13 in a fixed position?  
14 A No, sir, I did not--I had it fixed--well, I did have  
15 my tripod in the hallway.  
16 Q You had it on a tripod?  
17 A A tripod I have in my kit.  
18 Q You knew what the distance between the lens and the  
19 object you were photographing were, didn't you?  
20 A I was aware of it. I didn't--I don't keep a record  
21 of it.  
22 Q And you knew what your camera speed was, didn't you?  
23 A It's an automatic camera, yes, sir.  
24 Q You knew what the lens opening was, you preset the  
25 lens opening?  
26 A It's an automatic camera. It sets it for me when I  
27 ask it to.  
28 Q Now, you knew what kind of film you were using?  
29 A Yes, sir, I do know that.



Q You don't know any of those things about those  
photographs that you saw?

A No, sir, because that is not important to my analysis.

Q Not important. Okay. Now, I want to show you the  
photograph marked photograph 3 that has been  
introduced into evidence. This is a photograph  
that was taken by technician Waguespack.

A Yes, sir,

Q Okay. Now, you see the color distinction between that  
lady's hair and that wall (indicating)?

A It is very blurry.

Q Very blurry. You see the relationship of that chair  
behind her?

A Yes, sir, I see that.

Q Okay. If I told you that the detective testified that  
this is fifteen feet away, would you disagree  
with that?

A I have no basis to disagree with it, no, sir.

Q And you really wouldn't know how far away it was, do  
you?

A No, sir, I can't tell.

Q Because that picture doesn't tell you, does it?

A No, sir, it doesn't.

Q In relation to the bite marks, if I told you that the  
detective testified this morning that the type  
of film he used made the colors more colorful,  
the red more red, the blues more blue, and the  
greens more green, would you disagree with that?

A No, sir, I wouldn't disagree with that.

1 Q And if I told you that he also testified he does not  
2 know who developed these photographs?

3 A I don't, either.

4 Q And if I told you that some of the impressions, some  
5 of the impressions that you are referring to as  
6 bite marks are exaggerated due to the development,  
7 can you disagree with that?

8 A I would disagree with that, yes, sir.

9 Q Based upon what basis?

10 A Based upon the fact these are all on the same plane  
11 of focus. It doesn't matter whether the chair  
12 is fifteen feet back, as you say, the floor is  
13 behind her head, therefore, there is going to  
14 be some loss of focus in that long distance.  
15 But when you are taking a specific picture in  
16 a specific area, your depth of field is limited  
17 in that area in which you are interested. And  
18 a bite mark, that area is very small and is  
19 within the depth field. And the colors, the  
20 contrast between the skin that is unmarked and  
21 the skin that is marked. It's not whether it  
22 is red, or purple, green, or blue.

23 Q Let me ask you this: You stated on both occasions  
24 that you have been here that you know where the  
25 mid-line of the lady's spine is?

26 A Yes, sir, because I have the photograph of the first  
27 photograph I showed, two pictures, the spine  
28 is visible in that picture. The bulge of the  
29 spine is visible in that picture.

1 Q You still insist, based upon your analysis, that these  
2 were identical bite marks to the teeth that you  
3 examined?

4 A. I do not believe I used the word "Identical". I said  
5 these bite marks were made by Mr. Jackson--I  
6 mean the bite marks on the photographs were  
7 identical to the photographs that I handled. I  
8 really don't understand the question.

9 Q I will rephrase it. Dr. Barsley, the business you  
10 are in of odontology is/<sup>a</sup>relatively new field  
11 of scientific endeavor, or discipline, isn't  
12 it?

13 A. In some respects it is relatively new.

14 Q And that you are probably a pioneer in this field?

15 A. I would say more or less a second generation.

16 Q But it's not your testimony that this is a precise  
17 science, is it?

18 A. This is a--you have to define the word "precise" for  
19 me. It is a science, say it that way.

20 Q Based on principles?

21 A. Based on principles.

22 Q And the application of those principles?

23 A. Yes, sir.

24 Q Okay. But those principles don't give infallibility,  
25 do they?

26 A. No, sir, I didn't testify about infallible.

27 Q Okay. I realize that, but you testified that you are  
28 not wrong?

29 A. I believe myself to be correct, or I wouldn't be here

as a sworn witness.

Q Let me ask you this: Is it your testimony to the ladies and gentlemen of the jury that based upon your analysis these bite marks in this case couldn't be made by anybody else?

A. I never said that.

MR. O'NEILL:

No further questions. Thank you.

RE-DIRECT EXAMINATION

MR. GREEN:

Q Dr. Barsley, is there any doubt whatsoever in your mind as to your conclusion that Willie Jackson was the individual who bit the victim, [REDACTED] [REDACTED]?

A. There is no doubt in my mind that Willie Jackson is the individual who bit Mrs. [REDACTED]

Q Now, let me ask you this: Is this scientific process recognizable?

A. Yes, sir, it is recognizable. It has been--

Q Has it been sufficiently established?

A. I believe it has been sufficiently established. It has never been overturned in a court of law.

Q Thirdly--

A. To my knowledge.

Q Has this principle and method gained acceptance in the field to which it belongs?

A. Yes, sir, it has.

MR. GREEN:

Thank you, I have no other questions.

1                   Your Honor, at this time I would like to  
2 offer, file and introduce into evidence State's  
3 exhibit 27, consisting of the model that was  
4 taken by Dr. Barsley of the defendant's teeth.  
5 And State's exhibit 28 in globo, which consists  
6 of the nineteen slides which have just been used.

7 THE COURT:

8                   Mr. O'Neill,

9 MR. O'NEILL:

10                   I don't have any objection.

11 THE COURT:

12                   All right. The doctor is excused?

13 MR. GREEN:

14                   Yes, thank you, Dr. Barsley.

15 MR. O'NEILL:

16                   Your Honor, can I approach the Bench?

17                   (Discussion off the record at the Bench.)

18 MR. GREEN:

19                   For the record, Your Honor, I am giving  
20 Mr. O'Neill the duplicate of the model which we  
21 have introduced into evidence--this is the  
22 original. For the record, there were two  
23 originals made.

24 THE COURT:

25                   Okay.

26                   (Discussion off the record.)

27 MR. GREEN:

28                   I would like to call Detective Judy Rice.  
29