

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

Superior Court
 Department of the
 Trial Court
 Criminal Action No.
 072574

COMMONWEALTH

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MARVIN MITCHELL

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 BEFORE: Todd, J.
 January 18, 1990

Vol 1

TRANSCRIPT OF PROCEEDINGSTESTIMONY

APPEARANCES:

Leslie O'Brien, Esq., Assistant District Attorney,
 Suffolk Superior Court on behalf of the Commonwealth.

Jonathan Brant, Esq., Boston, Massachusetts on behalf
 of the Defendant.

E. Joan Cave
 Official Court Reporter

Tape 13

1-45

1 DAVID BRODY, SWORN

2 DIRECT EXAMINATION BY MS. O'BRIEN:

3 Q Good morning, would you please identify
4 yourself for the Court?

5 A My name is David, middle initial L, last
6 name Brody, spelled B-R-O-D-Y. I'm a
7 senior criminalist with the Boston Police
8 Crime Laboratory.

9 Q How long has that been your occupation?

10 A 24 years.

11 Q And can you describe what you do in that
12 position?

13 A It's my duty to either collect or receive
14 various types of physical evidence, examine
15 the evidence, perform any necessary tests,
16 evaluate the results, and then to present
17 my findings in the Court.

18 Q What type of training do you have for that
19 line of work?

20 A I'm a graduate of the Massachusetts College
21 of Pharmacy and I received a bachelor of
22 science degree there. I completed several
23 credit hours Framingham State College.
24 I've attended various seminars and received

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1 certificates from BU School of Human
2 Medicine, also Penn State University. I've
3 had on the job training at the Boston
4 Police Laboratory, also the State Police
5 Laboratory. I've attended various courses
6 at the FBI Academy at Quantico, Virginia
7 which included the biochemical methods of
8 blood stain analysis, forensic pathology,
9 and various fibers, and two blood courses,
10 serology course, Graduate credit courses at
11 University of Virginia. I've testified and
12 I'm also on the faculty or I have been on
13 the faculty at Northeastern University and
14 Mass. Bay Community College, and also Dean
15 Junior College as an instructor in
16 criminalistics.
17 I've testified in all of the lower courts
18 in Suffolk County, Suffolk Grand Jury,
19 Suffolk Superior Court. Also in Norfolk
20 County, Middlesex County, and I've also
21 testified as an expert in the State of
22 Rhode Island.

23 Q Thank you.

24 MS. O'BRIEN: May I approach the

10/97D

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Tape 13

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1 witness, your Honor.

2 THE COURT: You may.

3 Q Sir, I'd like to show you this article and
4 ask you if you recognize it?

5 A Yes, I do. This is an item of clothing
6 that was submitted to the laboratory by
7 Detective Evelyn Brien on September 23,
8 1988.

9 Q And when you received this article of
10 clothing, did you receive anything else
11 along with that?

12 A Yes, there were several articles of
13 clothing and also a rape kit, something
14 called a rape kit.

15 Q What does a rape kit consist of?

16 A There are several types but basically it
17 consists of usually ~~having microscope smear~~
18 slides, be it oral, vaginal, rectal,
19 etcetera. Also it can have vaginal, oral,
20 or rectal swabs, cotton tip swabs. It can
21 also have wipes, gauze wipes.
22 In addition there should be human hair
23 combings and human hair standards. And in
24 some cases a sample of the victim's blood

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Tape 13

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1 also.

2 Q Now, Mr. Brody, with regard to the sweat
3 shirt that you just looked at, did you
4 perform some work or some testing with
5 regard to that sweat shirt?

6 A Yes, I did.

7 Q What procedure did you follow with regard
8 to - specifically with regard to the shirt?

9 A The basic procedure is usually a technician
10 will describe the item, look for any stains
11 that may be related, cut out such stains,
12 dry them, freeze them if necessary and set
13 up a series of tests to determine what the
14 stain is. Results are evaluated by me.

15 In this case the white sweat shirt, it had
16 the IZOD label, and it has several areas of
17 stains on the sweat shirt especially the
18 front panel. Semen and H blood group
19 substance was identified in the stain. H
20 blood group substance is consistent with
21 having a Group O individual.

22 Q Now with regard to the defendant in this
23 case, did you ever come into contact with
24 Marvin Mitchell?

Tape 13

1-49

1 A Yes, I did.


2 Q And will you describe the circumstances in
3 which you came into contact with Marvin
4 Mitchell?

5 A I was present when Marvin Mitchell
6 submitted to giving a blood and saliva
7 sample. Just a blood and saliva sample to
8 the best of my knowledge.

9 Q Did you do some testing with regard to
10 those samples?

11 A Yes. Mr. Mitchell's blood was tested and -
12 his blood was tested and was found to be
13 Group A negative, a secretor.

~~14 Q Now did you make a comparison with the
15 results that you obtained from the blood of
16 Mr. Mitchell with the test results
17 regarding the stains on the sweat shirt?~~

18 A Yes, I did. The stains on the sweat shirt
19 as I said was a - had semen and also the
20 Group H blood group type. The tests on Ms.
21  the saliva sample showed her to be
22 originally or showed her to be a Group O
23 secretor. In other words - shall I
24 explain?

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1-50

1 THE COURT: Just wait for the next
2 question.

3 Q I ask you, sir, taking that information you
4 just related to the Court that the saliva
5 of Ms. ██████████ showed her to be an O
6 secretor, is that correct?

7 A That's correct.

8 Q And that the defendant was shown to be an A
9 secretor?

10 A That's correct.

11 Q And that the substance in the semen was
12 found to contain - or the substance in the
13 stain, rather, was found to contain an H
14 facto. How did you analyze that result?

15 MR. BRANT: I object to the form
16 of the question, your Honor.

17 THE COURT: What's the basis for
18 the objection?

19 MR. BRANT: Well, it seems to be
20 asking for an opinion but it's rather
21 confusing.

22 THE COURT: Well, if the witness
23 can understand it he can answer it.

24 A I believe I can. The stain on the sweat

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1 shirt contained semen. It also contained
2 the H blood groups which would had to have
3 been deposited by a Group O individual, a
4 Group O secretor. The stain on the sweat
5 shirt was not totally semen. So in the
6 Group O or the H blood group substance in
7 the stain on the sweat shirt could have
8 been deposited by Ms. [REDACTED] as she is a O
9 secretor. There was nothing in the stain
10 that showed the presence of A blood group
11 substance of which Mr. Mitchell is an A
12 secretor.

13 Q With regard to those results were you able
14 to determine whether Mr. Mitchell, using
15 the results of the blood test that you
16 have, were you able to determine whether
17 Mr. Mitchell could be excluded as the
18 depositor of the semen?

19 A Mr. Mitchell could not be excluded. No
20 secretor could be excluded from depositing
21 that stain because the stain may have been
22 too diluted or graded to pick up Mr.
23 Mitchell's blood type. So I cannot exclude
24 him, but I cannot say that I found the A

Tape 13

1-52

1 blood group type.

2 In other words, again no secretor can be
3 totally excluded from the stain.

4 Q Thank you.

5 MS. O'BRIEN: Nothing further.

6

7 (Marked for Identification - With
8 Objection)

9

10 CROSS-EXAMINATION BY MR. BRANT:

11 Q I take it the purpose of preparing Mr.
12 Mitchell's blood and analyzing of the stain
13 was to see whether there was a match which
14 would have under your direct-would-have
15 concluded direct - exculpatory and that the
16 results as you indicated while they don't
17 absolutely exclude him there wasn't a
18 match?

19 A That's correct. We didn't find the A blood
20 group substance which Mr. Mitchell as an A
21 secretor would have deposited. But again
22 we cannot exclude Mr. Mitchell because he
23 is a secretor.

24 Q On the other hand, the stained blood could

Tape 13

1-53

1 have been - the semen could have come from
2 somebody else who was, as you said, an O
3 secretor?

4 A It could have come from someone who is an O
5 secretor, yes.

6 Q And if it had come from someone who is an O
7 secretor that wouldn't have matched, is
8 that correct?

9 A Well, that would show the same blood type.
10 And, again, the stain wasn't entirely
11 semen. We don't know if that H came -
12 could have come from the victim in this
13 case because she's an O secretor.

14 Q If it was

15 A It could have been mixture of some sort of
16 fluids in the victim along with the semen.

17 Q And what if ~~it had come from somebody else~~
18 other than the victim, what finding,
19 testing from the other person would you
20 have wanted -- if it was a match?

21 MS. O'BRIEN: Objection, your
22 Honor.

23 THE COURT: Grounds?

24 MS. O'BRIEN: Vagueness.