

1 WEDNESDAY MORNING SESSION

2 JUNE 26, 1991

3 ---oOo---

4 THE COURT: Good morning,
5 ladies and gentlemen.

6 Call your next witness.

7 MR. DOBECK: Thank you, your
8 Honor. The State calls Dale Laux.

9 ---oOo---

10
11 THEREUPON, the State of Ohio, to
12 further maintain the issues on its part
13 to be maintained, called as a witness,
14 DALE LAUX, who, being first duly sworn,
15 was examined and testified as follows:
1617 THE COURT: When you
18 testify, speak loudly and distinctly,
19 will you do that?

20 THE WITNESS: Yes.

21 THE COURT: State your full
22 name and spell your last name for the
23 record.24 THE WITNESS: Dale Laux,
25 L-a-u-x.

1 ---oOo---

2 (Thereupon, State's Exhibit 23
3 was marked for identification
4 purposes.)

5 ---oOo---

6
7 DIRECT EXAMINATION

8
9 BY MR. DOBECK:

10 Q. Mr. Laux, are you presently employed?

11 A. Yes, sir.

12 Q. By whom and in what capacity?

13 A. With the Ohio Bureau of Criminal
14 Investigation. Investigation and forensic
15 research scientist.

16 Q. How long have you been -- is that the lab
17 that's commonly known as BCI?

18 A. Yes, sir.

19 Q. How long have you been with BCI?

20 A. Eleven years.

21 Q. And now, could you please state for us
22 some of your educational qualifications for an
23 investigator?

24 A. I have a Bachelor of Science Degree in
25 Biology from Heidelberg College, and a Master

1 of Science Degree in Biology from Ohio State
2 University. And I have had quite extensive
3 training in the area of forensic science. I
4 could go further if you want.

5 Q. If you would, please.

6 A. I attended the FBI Academy in Quantico,
7 Virginia, on three different occasions. Two of
8 the courses that I took were analysis of blood
9 stains and semen and one of the courses was on
10 the education and comparison of hairs and
11 fibers. I had advanced training in forensic
12 microscopy from Walter McCrone's Laboratory in
13 Chicago, Illinois.

14 Advanced training in serology, which is
15 the study of blood and semen from the
16 Serological Research Institute in Emeryville,
17 California. Advanced training in blood
18 analysis from the Illinois Department of Law
19 Enforcement. And I have attended schools and
20 workshops at the American Academy of Forensic
21 Scientists and the Midwest Association of
22 Forensic Scientists, two groups that I have
23 belonged to.

24 Q. As I understand it, you also, Mr. Laux,
25 teach in the area of forensic science?

1 A. Yes.

2 Q. Could you give us an overview of that
3 experience, please?

4 A. I presented a workshop on luminol, which
5 is a chemical used in identifying blood stains,
6 at the Midwest Association of Forensic
7 Scientists. A workshop in electrophoretic
8 analysis of blood and semen. Also for the
9 Midwestern Association of Forensic Scientists.
10 Myself and a partner I worked with presented a
11 blood analysis workshop on several occasions
12 for officers in the State of Ohio.

13 Q. You have received awards from the State
14 of Ohio?

15 A. Yes.

16 Q. What would those be?

17 A. I was named Peace Officer of the Year for
18 1988 by the Ohio Prosecuting Attorneys
19 Association.

20 Q. And I take it then, Mr. Laux, you have
21 testified as an expert in court before?

22 A. Yes.

23 Q. Approximately how many times?

24 A. Between 130 and 150 times.

25 Q. And if you could, please, outline some

1 duties and functions that you have with the BCI
2 lab in Richfield.

3 A. As a forensic scientist, I have worked
4 largely in the laboratory. Occasionally I go
5 out to the crime scenes. I have analyzed blood
6 stains and semen. These are material I usually
7 work with on all sorts of crimes, felonious
8 assault, homicide, all sorts of criminal cases
9 that come in that are brought to us by the
10 sheriff's departments and the police
11 departments in the State of Ohio.

12 Q. And you're familiar then with the various
13 procedures, various tests that are run in a
14 rape kit?

15 A. Yes.

16 Q. Approximately how many rape kits have you
17 worked on in your eleven years with BCI?

18 A. Thousands.

19 Q. Now, Mr. Laux, did you ever -- first of
20 all, there is a Detective Robert Laux from the
21 City of Brook Park Police Department. Any
22 relationship at all?

23 A. No.

24 Q. Thank you. Did you take part in the
25 examination of evidence from a one Brian .

1 Piszczek and [REDACTED]?

2 A. Yes.

3 Q. When did you become involved in this?

4 A. September 13th, 1990, when the initial
5 submission came into their laboratory in
6 reference to this case.

7 Q. When you refer to the initial submission,
8 could you tell us what you received and how it
9 was that it came to your attention?

10 A. It was a sex crime kit from the victim
11 and also one from the subject, brought into the
12 laboratory. And the victim's bathrobe,
13 nightgown and a plaid blanket, all of the items
14 were brought in on this date.

15 Q. Once you received that information in
16 this submission, what is it that you did then,
17 what tests did you run on the articles brought
18 to you?

19 A. The kit was examined for the presence of
20 seminal fluid and the clothing also was
21 examined for the presence of seminal stains and
22 trace evidence, hair and fibers.

23 ---oOo---

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1 (Thereupon, State's Exhibit 24
2 was marked for identification
3 purposes.)

4 ---oOo---

5 Q. Mr. Laux, showing you what has been
6 marked for identification as State's Exhibit
7 24, can you identify that box, please?

8 A. Yes, sir. This is the sex crime kit
9 identified with our BCI number and item number.
10 And my initials and date appears on the box.

11 Q. That is the rape kit?

12 A. Yes.

13 Q. That pertains to the victim in this case?

14 A. [REDACTED].

15 Q. That in fact is the rape kit that you
16 conducted all the analysis in preparation to
17 testify here today?

18 A. Yes.

19 Q. Is contained in that -- am I correct,
20 this states that contained in the rape kit were
21 vaginal and anal swabs?

22 A. Yes.

23 Q. And what did you do when you received it,
24 the vaginal and anal swabs in the rape kit?

25 A. I initially examined it with a chemical

1 reagent to see if semen is present. This turns
2 the chemical purple. And in this case it was
3 positive. I then examined the vaginal smears
4 that were also in the rape kit, microscopic-
5 ally, and stained those. Looked at them with a
6 microscope and saw the presence of spermatozoa.

7 Q. Did you discover the presence of
8 spermatozoa on both the vaginal and anal swabs?

9 A. The vaginal and anal smears were made by
10 those swabs.

11 Q. Now, with respect to those, to your
12 examination, microscopic examination, could you
13 give us an idea where there was a higher
14 concentration of spermatozoa as between the two
15 swabs?

16 A. Yes. A great deal more spermatozoa was
17 found on the vaginal swab than on the rectal
18 swab.

19 Q. There are no allegations of anal
20 penetration or anal intercourse here. Can you
21 explain the fact that spermatozoa appeared on
22 the smear that was taken from the anus?

23 MR. McDONNELL: Objection.

24 THE COURT: Overruled.

25 A. Yes.

1 Q. If you would, please.

2 A. One possible explanation is, it has
3 occurred, this would not be the first time,
4 where vaginal intercourse perhaps has taken
5 place and then the patient puts on her clothing
6 and is transferred to the hospital. Some time
7 between the assault and when she gets to the
8 hospital and is examined, there is leakage from
9 the vagina. The seminal fluid could be located
10 around the rectal area. In doing swabs of that
11 area, that could be the source for that seminal
12 fluid.

13 Q. Now, Mr. Laux, are you able to, based on
14 the seminal fluids alone, are you able to first
15 analyze and test the blood groups?

16 A. Yes, sir, I was.

17 Q. Incidentally, did you receive a sample of
18 the blood type from the victim, as well as the
19 blood type from the defendant?

20 A. Yes, I received their blood samples.

21 Q. Those were given independently from the
22 rape kit, is that correct?

23 A. Yes, that's correct. I'm sorry, the
24 blood sample may have been from the rape kit --
25 no, you're right, the sample from the victim

1 and the subject were submitted separately.

2 Q. And you are able to give or discover the
3 blood type of the victim, [REDACTED]?

4 A. Yes.

5 Q. What blood groups did they belong to?

6 A. She's a type A secreter. A secreter
7 refers to the fact that she secretes more blood
8 substances in secretions such as vaginal
9 secretions, perspiration and saliva. And the
10 term "non-secreter" implies or refers to the
11 fact that a person that's a non-secreter would
12 not secrete the blood group substances in
13 detectable levels in those secretions.

14 Q. So just so that we are clear on this, the
15 defendant wasn't a secreter; and a secreter, if
16 you have a sample of a secreter's saliva or
17 vaginal fluid, blood groupings can be
18 detected from that?

19 A. That's correct.

20 MR. McDONNELL: Objection.

21 THE COURT: Sustained.

22 Approach the bench.

23 ---oOo---

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1 (Thereupon, side bar conference
2 was had off the record out of the
3 hearing of the jury.)

4 ---oOo---

5 MR. DOBECK: I will withdraw
6 that previous question, your Honor.

7 BY MR. DOBECK:

8 Q. Mr. Laux, again, speaking of the bodily
9 fluids of a secreter, be it saliva,
10 perspiration or vaginal fluid, based on your
11 experience and a reasonable degree of medical
12 and scientific certainty, is it fair to say
13 that those fluids --

14 MR. McDONNELL: Objection.

15 THE COURT: Sustained.

16 Q. Based on a reasonable degree of
17 scientific certainty, Mr. Laux, can you type
18 blood groups from the body fluids of a
19 secreter?

20 A. Yes.

21 Q. Based on medical -- based on a reasonable
22 degree of scientific certainty, can you do that
23 with a non-secreter's bodily fluids?

24 A. No.

25 Q. Did you examine the bodily -- excuse me

1 -- semen that was found in Janet Quelette, to
2 try and determine the blood group on that?

3 A. Yes.

4 Q. What was the conclusion?

5 A. I determined the presence of types A and
6 H blood group substances.

7 Q. You have indicated that the blood group
8 from the nightgown that you tested was AH,
9 also, is that correct?

10 A. Includes the sample, yes.

11 Q. The blood samples of the defendant, could
12 you tell what your findings were as to them?

13 A. Yes.

14 Q. Please do.

15 A. He was B non-secreter.

16 Q. In other words, as a non-secreter, based
17 on a reasonable degree of scientific certainty,
18 as a non-secreter, he would, based on his
19 semen; based on his perspiration and based on
20 his saliva and based on his bodily fluids, you
21 could conduct a test of his group from that, is
22 that correct?

23 A. That's correct.

24 Q. So hypothetically, Mr. Laux, if you were
25 to have a test tube of his semen, could you

1 tell, and that's all you had, a test tube of
2 his semen, could you tell what his blood group
3 was from that?

4 MR. McDONNELL: Objection.

5 THE COURT: Sustained.

6 Q. Based on a reasonable degree of
7 scientific certainty, if you were to have a
8 test tube of his semen, only, can you tell what
9 blood group he was?

10 MR. McDONNELL: Objection.

11 THE COURT: Overruled. You
12 may answer.

13 A. Yes, I could -- I'm sorry, no, I could
14 not.

15 Q. I will repeat the question so you can
16 answer it again.

17 Based on a reasonable degree of
18 scientific certainty, if you had a test tube of
19 his semen, as a non-secreter, could you type
20 his blood group?

21 A. No, sir.

22 Q. And, Mr. Laux, showing you what has been
23 identified as State's Exhibit 23, can you
24 identify those two documents, please?

25 A. Yes, I can.

1 Q. If you would.

2 A. It's a copy of the report that I prepared
3 in reference to this case, dated February 28th,
4 1991.

5 Q. And in speaking now to the first page of
6 State's Exhibit 23, does that memorialize your
7 finding that you just testified to today?

8 A. Yes, sir.

9 Q. It indicates that she is AH and he is a B
10 blood grouping?

11 A. Yes.

12 Q. She is a secreter and he's a
13 non-secreter?

14 A. That's correct.

15 Q. Is that a true and accurate copy of the
16 report as you prepared it?

17 A. Yes, sir.

18 Q. Now, the fact that you were able to type
19 the semen from the smear, is that consistent
20 with the victim's blood?

21 A. The substance I detected on the vaginal
22 swab and the anal swab were consistent with the
23 substances of the victim, yes.

24 Q. In fact, again, based on a reasonable
25 degree of scientific certainty, if you had

1 found semen in [REDACTED], would you be
2 able to type the blood type --

3 MR. DOBECK: Strike that.

4 Q. Again, with a reasonable degree of
5 scientific certainty, the fact that you found
6 semen in the victim, you were unable to type
7 the blood type of the defendant because he's a
8 non-secreter; is that consistent with the
9 defendant having been the one that committed
10 these crimes?

11 MR. McDONNELL: I object to
12 that.

13 THE COURT: Sustained.

14 Q. In fact, you could not type what the
15 group was, other than AH, which is consistent
16 with the victim's, correct?

17 A. Yes.

18 Q. Is it also consistent that a non-secreter
19 was the person that left the semen there?

20 MR. McDONNELL: Objection.

21 THE COURT: Overruled.

22 A. That is consistent with not finding any
23 other blood group substances.

24 Q. And then, finally, Mr. Laux, let me ask
25 you about other procedures that were run, some

1 of the other procedures that were in the rape
2 kit. For instance, the fingernail scrapings.

3 A. Yes.

4 Q. Can you tell us your findings with regard
5 to the fingernail scrapings?

6 A. There was nothing of evidential value
7 that was observed.

8 Q. A pubic combing was done on the victim,
9 is that correct?

10 A. Yes.

11 Q. Could you tell us what you found with
12 respect to your finding, with respect to your
13 pubic comb?

14 A. I found one light brown pubic hair which
15 was consistent with the pubic hair from the
16 victim.

17 MR. DOBECK: Just one
18 moment, please, your Honor.

19 Thank you, nothing further.

20 THE COURT: Mr. McDonnell?

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CROSS-EXAMINATION

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3 BY MR. McDONNELL:

4 Q. I am going to ask you a series of
5 questions. If at any time you don't understand
6 the question, please ask me to repeat it, okay?

7 A. Yes.

8 Q. Would it be fair to say that on all the
9 tests that you did, there is nothing to connect
10 the defendant to this crime?

11 A. Yes.

12 Q. Now, you did say that you were provided
13 with samples of pubic hairs, correct?

14 A. From the victim, yes.

15 Q. Were you provided with samples from the
16 defendant?

17 A. No, sir.

18 Q. How many pages is your report?

19 A. Two.

20 Q. How many pages did you just look through?

21 A. I looked for the submission sheets, not
22 my report.

23 Q. So -- I'm sorry, I'm thinking of
24 something else that answered that question.

25 You were not given anything from the

1 victim in terms of pubic -- any type of hair
2 from the victim?

3 A. No, from the victim I was --

4 Q. From the victim, yes. But not from the
5 defendant?

6 A. That's correct.

7 Q. However, if, in the combing of the pubic
8 hairs that were given to you, which were the
9 result of combing the victim's pubic hairs, you
10 found one pubic hair that was not consistent
11 with the rest, is that --

12 A. No, I found one pubic hair in the
13 combings and that was consistent with her
14 standard which was collected from her.

15 Q. Was that done microscopically, to
16 compare?

17 A. Stereomicroscope, yes.

18 Q. What does that mean?

19 A. It's a fancy magnifying glass giving a
20 magnification of perhaps 10 to 20x.

21 Q. You would say it was consistent with, but
22 you couldn't say it definitely was her hair?

23 A. That's correct.

24 Q. Based upon that fact that you could say
25 -- you couldn't say for sure it was her hair?

1 A. That's correct.

2 Q. Did you ever think, maybe it would have
3 been proper to take a pubic hair sample from
4 the defendant?

5 A. No.

6 Q. Did you not do that?

7 A. I did not request that.

8 Q. You found nothing of significance in the
9 evidence that was presented to you that said
10 that it was taken from underneath the
11 fingernails?

12 A. Correct.

13 Q. Therefore, you did not test it or do some
14 tests on it?

15 A. Visual exam. Really nothing there to
16 test, other than the nails.

17 Q. There was only nails, there was nothing
18 else underneath?

19 A. Correct.

20 Q. Could you have done a microscopic
21 examination if you had so wanted?

22 A. Those were examined with a
23 stereomicroscope.

24 THE COURT: Just answer yes
25 or no, sir.

1 A. Could I do that then? Yes.

2 Q. I thought you said you just did a visual
3 examination with the eye.

4 A. With a microscope.

5 Q. Okay. Now, is there a test known as a
6 chromosome variant analysis, correct?

7 A. I'm not aware of that.

8 Q. You are not aware of that? How about a
9 study that linked defendants with the victim,
10 with a test comparing the DNA?

11 A. Yes.

12 Q. That's been done before?

13 A. Correct.

14 Q. And it's really reliable, correct?

15 A. Yes.

16 Q. Very reliable, those tests, correct?

17 A. My understanding, yes.

18 Q. You could have done those tests in this
19 instance, correct?

20 A. Not in our laboratory, no, I could not.

21 Q. Your laboratory maybe couldn't have done
22 it. There are laboratories in the United
23 States that could do that, correct?

24 A. Yes.

25 Q. And obviously your laboratory didn't do

1 it, since you didn't have the capabilities?

2 A. Correct.

3 Q. And you didn't send it to any other
4 laboratory that does have the capabilities to
5 conduct a DNA analysis, therefore it wasn't
6 done, correct?

7 A. Correct.

8 Q. And you have no scientific evidence to
9 connect this defendant, Brian, to this crime
10 whatsoever?

11 A. There is, other than seminal fluid,
12 nothing that ties him in, like fingerprints.

13 Q. You can't say ties him in at all, can
14 you?

15 A. Well, no. There is semen there, but I
16 limit it down to males. Other than that, no.

17 Q. Limited to all the males in the United
18 States?

19 A. That had access to the victim on this
20 particular day.

21 Q. No further questions.

22 THE COURT: Anything
23 further?

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REDIRECT EXAMINATION

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3 BY MR. DOBECK:

4 Q. Briefly, following Mr. McDonnell's
5 questions, you said you have no scientific
6 evidence to tie him to it, but on the other
7 hand, because he is a non-secreter, he cannot
8 be excluded, either, is that correct?

9 A. That's true.

10 Q. And with respect to the pubic hair, that
11 pubic hair coming, you said you found one hair
12 that was consistent with her hair, the victim's
13 hair, correct? Are you aware there was a
14 six-week delay from the day of the crime
15 alleged to have occurred and the date that the
16 defendant was arrested?

17 A. No. I was aware of a time period between
18 when the assault occurred and when the rape kit
19 came in. I was unaware there was a time
20 difference between when the defendant was
21 arrested.

22 MR. DOBECK: Nothing
23 further, your Honor.

24 THE COURT: Anything
25 further?

1 MR. McDONNELL: No, your Honor.

2 THE COURT: Thank you. You
3 may step down.

4 ---oOo---

5 (Witness excused.)

6 ---oOo---

7 THE COURT: Call your next
8 witness.

9 MR. DOBECK: The State will
10 call Sandy Jo Preston.

11 ---oOo---

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