

02-02-1971
05-87-197-OK

\$54.48

X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NO. F86-90792-L

THE STATE OF TEXAS X IN CRIMINAL DISTRICT COURT
X
VERSUS X NO. 5 DALLAS COUNTY, TEXAS
X
BILLY JAMES SMITH X JANUARY TERM, A.D., 1987

FILED IN
COURT OF APPEALS

DEC 17 2002

LISA MATZ
CLERK, 5th DISTRICT

STATEMENT OF FACTS
VOLUME I OF I VOLUME

FILED IN
COURT OF APPEALS

APR 7 1987

KENNETH P. STRIPLING
CLERK, 5th DISTRICT

APPEARANCES:

HON. JOHN VANCE
Criminal District Attorney
Dallas County, Texas

BY: HON. L. DEE SHIPMAN
and
HON. BRUCE ISAACKS
Assistant District Attorneys

APPEARING FOR THE STATE

HON. HOWARD WILSON
Attorney at Law
Dallas, Texas

APPEARING FOR THE DEFENDANT

INDEX OF PROCEEDINGS

Page

Guilt or Innocence

1		
2		
3		
4	Booth, Sharon (Hearing)	
5	Direct Examination	19
6	Cross-Examination	24
7	Booth, Sharon	
8	Direct Examination	44
9	Cross-Examination	82
10	Redirect Examination	103
11	Clayton, Marvin	
12	Direct Examination	106
13	Cross-Examination	129
14	Redirect Examination	141
15	Recross-Examination	144
16	Brown, Charles	
17	Direct Examination	146
18	Cross-Examination	153
19	Redirect Examination	155
20	Van Winkle, Carolyn	
21	Direct Examination	156
22	Cross-Examination	161
23	McMillion, Donald	
24	Direct Examination	163
25	Cross-Examination	177
	Redirect Examination	182
	State Rests	183
	Hughes, Dave (Hearing)	
	Direct Examination	186
	Hughes, Dave	
	Direct Examination	207
	Cross-Examination	215
	Redirect Examination	216
	Recross-Examination	217
	Davis, Elizabeth	
	Direct Examination	219

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAROLYN VAN WINKLE,

called as a witness by the State, having been
duly sworn by the Court to testify to the
truth, the whole truth and nothing but the
truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHIPMAN:

Q First of all, would you state your
name for the members of the jury?

A Carolyn Van Winkle.

Q Who are you employed by?

A By the Institute of Forensic
Science in Dallas.

Q What is forensic science? Exactly
what does that mean, what area of science?

A It is the area dealing mainly with
legal matters.

Q Do you work generally there or do
you have a specialty in the area of forensic
science?

A I work in the serology department.

Q Exactly what is serology?

A We deal mainly with blood and body
fluids.

Q From working with body fluids,

1 would that work include working with seminal
2 fluid in sexual assault cases?

3 A That's correct.

4 Q Were you called upon to examine
5 the samples from a rape kit involving one
6 [REDACTED]?

7 A Yes.

8 Q How do you get the rape kit and
9 all these samples of bodily fluids?

10 A We personally go over to Parkland
11 Hospital and pick up the kits from a locked
12 secured box in the emergency room area of
13 Parkland.

14 Q Is this somewhat like a mail box,
15 the doctors drop it in and once it is in there,
16 even the doctors can't get it out of there?

17 A That's correct.

18 Q And you personally go and pick it
19 up?

20 A That's correct.

21 Q How are the kits labeled, the box
22 that holds all the samples?

23 A They are labeled generally with
24 the label issued by the hospital emergency room
25 with the patient's name, date of birth, and

1 things of that sort, emergency room number.

2 Q So it's going to have the
3 emergency room and the patient's name?

4 A Yes.

5 Q Did you pick up the rape kit
6 containing the samples for [REDACTED]?

7 A Yes.

8 Q Did you do an analysis on those?

9 A Yes.

10 Q What did you find in doing your
11 analysis?

12 A That seminal fluid was detected
13 from a vaginal swab. Spermatozoa were detected
14 from a vaginal smear and then her blood group
15 was blood group O.

16 Q Now, in some cases you can take
17 the samples of seminal fluid and do even
18 further analysis, is that right, and help
19 determine the probability that that sample came
20 from a particular individual, correct?

21 A That is correct.

22 Q Were you able to do that in this
23 case?

24 A No.

25 Q Why not?

1 A There was not a sufficient
2 quantity of seminal fluid to determine genetic
3 markers in this case.

4 Q Based upon all the testing that
5 you could do and everything, you can tell us
6 that there was seminal fluid found in the
7 samples, but beyond that no further testing
8 could be done?

9 A That's correct.

10 Q I'll hand you what's been marked
11 State's Exhibit Number Eleven. Do you
12 recognize this?

13 A Yes, sir.

14 Q What is this?

15 A It's a copy of our report issued
16 on the results on the vaginal swabs.

17 MR. SHIPMAN: The State would
18 offer into evidence, State's Exhibit
19 Number Eleven.

20 (Whereupon, State's Exhibit
21 Number Eleven was offered
22 into evidence.)

23 MR. WILSON: No objection.

24 THE COURT: State's Eleven will be
25 admitted.

1 (Whereupon, State's Exhibit
2 Number Eleven was admitted
3 into evidence.)

4 Q (By Mr. Shipman) Basically this
5 report tells us what you've been saying here in
6 your testimony; is that right?

7 A Yes.

8 Q That seminal fluid and spermatozoa
9 were detected in the vaginal swab, but no
10 interpretation could be made because of low
11 concentration?

12 A That's correct.

13 Q The fact that seminal fluid and
14 spermatozoa were found in these samples, what
15 does that indicate?

16 A It indicates that seminal fluid
17 was deposited vaginally.

18 Q That would indicate sexual
19 intercourse recently, recent to the actual
20 examination of the patient?

21 A That is the most usual way, yes,
22 sir.

23 MR. SHIPMAN: I'll pass the
24 witness.

25

CROSS-EXAMINATION

BY MR. WILSON:

Q You're not a doctor, are you?

A No, sir.

Q Ms. Van Winkle, my name is Howard Wilson and I represent the Defendant. This may be outside your field of expertise, but could you tell the jury how long seminal fluid or spermatozoa might remain in the body cavity that you detected?

A Evidence of spermatozoa maximumly can usually -- maximumly can be determined at seventy-two hours, which is approximately three days. That's optimumly. Most often it is not nearly that long.

Q So really the only thing that you can definitely say from your report is, that sometime within three days previously this young lady apparently had sexual intercourse?

A Well, sir, again, seminal fluid itself will not be detected more than twenty-four hours usually.

Q So sometime within a twenty-four hour period prior to the examination, this young lady had sexual intercourse?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A That is correct.

Q And that's really about it, isn't it?

A That's correct.

MR. WILSON: Nothing further.

MR. SHIPMAN: No further questions.

THE COURT: May this witness be excused?

MR. WILSON: No objection, Your Honor.

MR. SHIPMAN: The State would call Donald McMillion.

(Whereupon, the witness was duly sworn by the Court.)