

JAMES WALLER

COPY

1 IN THE CRIMINAL DISTRICT COURT NO. 4
2 DALLAS COUNTY, TEXAS

3 THE STATE OF TEXAS

4 VS.

NO. F-82-91294-TK

5 JAMES DOUGLAS WALLER

6 STATEMENT OF FACTS
7 REPORTER'S VOLUME 1 OF 1 VOLUME

8 A P P E A R A N C E S:

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Dallas County, Texas

10 BY HON. MARK NANCARROW
Assistant District Attorney
and

11 HON. GLENN MactAGGART
Assistant District Attorney

12 APPEARING FOR THE STATE OF TEXAS

13
14 HON. STANLEY EARL ANDERSON and ROGER JOYNER
Dallas, Dallas County, Texas

15 APPEARING FOR THE DEFENDANT

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FILED

APR 4 1983

BILL LONG
DIST. CLERK, DALLAS CO., TEXAS
DEPUTY

19 BE IT REMEMBERED THAT on the 31st day of
20 January, 1983, the above styled and numbered cause
21 came on to be heard before the HONORABLE JOHN
22 MEAD, Judge of the Criminal District Court No. 4
23 of Dallas County, Texas, and that the following is a
24 true, accurate, and complete transcript of the
25 proceedings had:

TINA MARIE JOHNSON, OFFICIAL COURT REPORTER

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1 A. As you walk in the front door that would be
2 the entry way to the bathroom.

3 Q. State's Exhibit No. 18, would that be an
4 extension of the mattress in State's Exhibit No. 9?

5 A. Yes, it's up against the wall.

6 MR. NANCARROW: That's all. We pass the
7 witness.

8 MR. JOYNER: No further questions, Your
9 Honor.

10 THE COURT: That's all. Have a short recess,
11 Members of the Jury. Go in the jury room.

12 (Whereupon there was a recess; after
13 which time, the following proceedings
14 were had.)

15 (Whereupon the jury returned to the
16 courtroom.)

17 Whereupon,

18 SALLY WILLIAMS

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

23 DIRECT EXAMINATION

24 BY MR. NANCARROW:

25 MR. NANCARROW: This witness, Your Honor,

1 she was sworn outside the presence of the jury.

2 Q. (By Mr. Nancarrow) Could you state your
3 name, please?

4 A. Sally Williams.

5 Q. Okay. And how are you employed?

6 A. At the Dallas County Southwestern Institute
7 of Forensic Sciences.

8 Q. And what do you do out there?

9 A. I'm a senior forensic serilogist.

10 Q. And can you explain to the jury what all
11 that entails?

12 A. I'm in charge of the detection and
13 identification of blood and body fluids.

14 Q. All right. Now did you become involved in
15 this case?

16 A. Yes, sir; I did.

17 Q. Okay. And how did you become involved in it?

18 A. I received some evidence in regards to this
19 case.

20 Q. Okay. Where did you get that from?

21 A. I received what we call a sexual assault kit
22 from the locked box at Parkland Memorial Hospital
23 located in obstetrics and gynecology department.

24 Q. And what is in that, whatever?

25 A. Sexual assault kit?

1 Q. Right.

2 A. In the sexual assault kit were 5 specimens,
3 an anal swab, an anal smear, a blood sample, pubic
4 hair cuttings and a perianal swab.

5 Q. And what do each of those -- what can be
6 done with each one of those samples?

7 A. With those samples it was requested that
8 seminal -- look for seminal fluid and spermatozoa.

9 Q. Okay. Were those on the victim by the name
10 of [REDACTED]?

11 A. Yes, sir; they were.

12 Q. What did you do with the samples that you
13 recovered there or you obtained from the lock box?

14 A. On the anal swab and the perianal swab, they
15 were tested for the presence of acid phosphatase
16 which is indicative of seminal fluid.

17 The anal smears were stained for spermatozoa
18 and the blood sample was tested in the ABO system and
19 the cuttings were released to Mr. Tim Fallon.

20 Q. Okay. Now did you also receive a sheet
21 there, out there at the lab?

22 A. Yes, sir; I did.

23 Q. Okay. And what all were the results of your
24 findings?

25 A. On everything or the sheet?

1 Q. On everything?

2 A. The results of the findings were on the anal
3 swab and perianal swab that there was no seminal
4 fluid present. On the anal smear that there were
5 spermatozoa present on that. On the blood sample was
6 the victim was an ABO blood group B. On the bed
7 sheet due to the condition of the bed sheet no
8 analysis for body fluids were done.

9 Q. Okay. What was the condition of that sheet?

10 A. The condition of the sheet was that it was a
11 white flat sheet that was filthy and because of this
12 and there were numerous stains, it was impossible for
13 us or for me to determine which was the latest stain
14 and also because of the condition of filthiness of
15 the sheet bacteria built up and therefore it makes
16 all of our tests really inconclusive.

17 Q. The sheet was basically in a condition not
18 suitable for your testing?

19 A. That's correct.

20 Q. All right. And you say you found
21 spermatazoa on the anal smear?

22 A. That's correct.

23 Q. Okay. Would that be indicative of some sort
24 of sexual intercourse?

25 A. Yes, sir; it is.

1 MR. NANCARROW: That's all. We pass the
2 witness.

3 CROSS EXAMINATION

4 BY MR. ANDERSON:

5 Q. Mrs. Wiggins; is that correct?

6 A. Williams.

7 Q. Williams. I am sorry. I am Stanley
8 Anderson and I am representing the accused in this
9 case. I just have a couple of questions for you,
10 ma'am?

11 A. Okay.

12 Q. Okay. Again you said you analyzed anal swab,
13 anal smear, blood samples, pubic hair and cuttings;
14 is that correct?

15 A. Pubic hair cuttings and a perianal swab.

16 Q. And that's [REDACTED] pubic hair; is that
17 correct?

18 A. That's correct.

19 Q. You didn't take any blood samples of pubic
20 hairs or anything else from the accused in this case;
21 did you?

22 A. No, sir; I did not.

23 Q. You did not. And you don't have any
24 personal knowledge as to the guilt or innocence of
25 the accused; do you?

1 A. No, sir. I do not.

2 MR. ANDERSON: Nothing further, Your Honor.

3 MR. NANCARROW: That's all. Your Honor, may
4 this witness be excused?

5 MR. ANDERSON: No objection.

6 (Whereupon the witness was duly sworn
7 by the Court.)

8 Whereupon,

9 TIMOTHY C. FALLON

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

14 DIRECT EXAMINATION

15 BY MR. NANCARROW:

16 Q. Could you state your name, please?

17 A. Timothy C. Fallon, F A L L O N (spelling).

18 Q. And how are you employed?

19 A. I am a trace evidence analyst with the
20 Dallas County Institute of Forensic Sciences.

21 Q. And what does that mean?

22 A. I examine materials such as glass, paint,
23 chemical residues, hairs and fibers for investigative
24 leads in criminal cases.

25 Q. Okay. What are your qualifications for that

1 position?

2 A. I have a bachelor of science degree from
3 Texas A & M University.

4 Q. All right. Now in connection with this case,
5 did you receive some evidence on November 5th of 1982?

6 A. Yes, sir; I did.

7 Q. And what was that?

8 A. It was a bed sheet.

9 Q. Okay. And what did you do with the bed
10 sheet?

11 A. The bed sheet was examined and all hairs
12 were removed from it and stored.

13 Q. And how many hairs were you able to find,
14 first of all?

15 A. I was able to find three hairs.

16 Q. Okay. Now if you have a sample are you able
17 to compare it with other known samples?

18 A. Yes, sir; I can.

19 Q. Okay. Is hair comparison, is that an exact
20 science?

21 A. No, sir. It is not.

22 Q. Okay. Even under the most ideal conditions
23 or circumstances would you ever be able to say that
24 the hair you obtained from a scene or wherever came
25 from a certain individual?

1 A. No, sir. I could not.

2 Q. Okay. At most what could you say about that?

3 A. That hair found at the scene could have come
4 from a certain individual.

5 Q. Okay. And are you even able to specifically
6 every time tell the race of the person where the
7 sample came from?

8 A. No, sir. I can't.

9 Q. Okay. Now in your examination of the hairs
10 that you found on the bed, what were you able to
11 determine?

12 A. I found three dark hair fragments with
13 negroid characteristics that were different from the
14 head and pubic hair of James Douglas Waller.

15 Q. All right. Now on the three hairs that you
16 obtained, you said those were fragments?

17 A. Yes, sir.

18 Q. Okay. What does that mean?

19 A. The complete hair is not present. It has
20 either been broken or cut at one end.

21 Q. Okay. And on your comparison did you
22 actually obtain a sample of the head and pubic hair
23 from the Defendant in this cause on a later date?

24 A. Yes, sir; I did.

25 Q. Okay. And with the sample obtained from

1 this defendant, what kind of hair did you obtain from
2 him?

3 A. I obtained head and pubic hair samples.

4 Q. Okay. Do you see the Defendant here in the
5 courtroom today?

6 A. Yes, sir; I do.

7 Q. Would you point him out, please?

8 A. I believe he's the man in the middle.

9 Q. Okay. Is it possible he could be one of the
10 other individuals?

11 A. I really don't -- I don't recall what he
12 looks like.

13 Q. But you did --

14 A. He's got his hair cut if it is.

15 Q. -- you did obtain a head and pubic sample
16 from an individual by the name of James Douglas
17 Waller; is that correct?

18 A. Yes, sir; I did.

19 Q. Now how many hairs did you obtain from that
20 individual?

21 A. At least ten of each sample.

22 Q. Ten from the head and ten from the pubic
23 area?

24 A. Yes.

25 Q. Okay. What's the purpose in that?

1 A. To get a large enough sample size so that
2 any variations in the hair can be observed; and so
3 that when you compare the hair found at the scene,
4 you can make sure that all the characteristics in
5 that hair can be found in the other hairs.

6 Q. All right. Now how many hairs were you
7 actually able to use that you found from the sheet
8 for comparison purposes?

9 A. One.

10 Q. Okay. So you were using one hair to compare
11 with the samples taken from the Defendant; is that
12 correct?

13 A. That's correct.

14 Q. All right. Now you said that the hairs you
15 found on the bed were or had negroid characteristics;
16 is that correct?

17 A. Yes, sir.

18 Q. Okay. Are you saying that they necessarily
19 came from a black individual?

20 A. No, sir.

21 Q. Okay. Is it possible they could have come
22 from some other race?

23 A. They could have.

24 Q. Okay. Is it also true that hair on your
25 body will have different characteristics in different

1 places?

2 A. That is correct.

3 Q. Okay. Is it possible that the hair on your
4 head may have different characteristics from a hair
5 located within a short distance from it?

6 A. Hair from the back of the head may be
7 different from hair from the front part of the head
8 or the side or depends on how close you get to the
9 side burn area or the nape of the neck, the
10 characteristics may change.

11 Q. Okay. Will they also change from one end of
12 your body down to your feet?

13 A. Yes, sir; they will.

14 Q. Okay. Hair from your shin is not
15 necessarily going to be the same as the hair from
16 your arm?

17 A. Not necessarily.

18 Q. Now in your findings from the two samples
19 you took from the Defendant, you were able to say
20 that the one hair you used for comparison did not
21 match up with the sample you had; is that correct?

22 A. That's correct.

23 Q. Okay. Are you saying that the hair you had
24 for comparison did not come from the Defendant in
25 this case?

1 A. No, sir; I am not.

2 Q. How would it be possible that it could be
3 from the Defendant?

4 A. It could have come from another area of the
5 body that we did not take a sample from. It could be
6 that the sample that was the known standard sample
7 that we took from the Defendant was not a large
8 enough random sample to take in all the different
9 characteristics that his hair possessed.

10 Q. Okay. Now the one hair you used for
11 comparison, could you even tell if that came from the
12 head or the pubic area for certain?

13 A. No, sir.

14 Q. All right. Now if you wanted to compare the
15 one hair you had with the Defendant from all
16 different parts of his body, what would that entail
17 or necessitate?

18 A. We would need a sample of hair from several
19 different areas of the body. If you would want to be
20 extremely specific, you would practically have to
21 denude a person of all their hair but that wouldn't
22 be possible. You would need a greater, larger sample.

23 Q. Okay. So you practically have to denude a
24 person to make a proper comparison?

25 A. If you wanted to make sure of the negative,

1 if you wanted to say that this hair did not come from
2 this individual, you would have to check it against
3 every hair to be positive that it did not come from
4 that individual.

5 Q. Okay. And is it even possible that you have --
6 or have you come across in your experience odd hairs
7 on a body?

8 A. Yes, sir.

9 Q. What would -- what does that mean?

10 A. A hair that does not fit into the range of
11 characteristic that that person has in their hair.

12 Q. All right. Now are you aware of the ways
13 hair can enter a home?

14 A. Yes, sir.

15 Q. Okay. Are there many ways a hair can get in
16 your house?

17 A. Yes, sir.

18 Q. Okay. And is it possible, can hairs blow in
19 when you open a door?

20 A. Yes, sir.

21 Q. Okay. Can they get into the ventilation
22 system?

23 A. Yes.

24 Q. Okay. Is it even possible to pickup hairs
25 when you do laundry?

1 A. Yes.

2 Q. Okay. So all you can say from your report
3 is that one hair you used did not compare to the
4 sample from the head or the pubic area of this
5 defendant; is that correct?

6 A. That's correct.

7 Q. Okay. And at the most the one hair you
8 could have said could have possibly come from this
9 defendant; is that right?

10 A. Yes.

11 Q. So you really couldn't say one way or the
12 other if the hair you used came from this defendant
13 or from somebody else?

14 A. That's correct.

15 MR. NANCARROW: We will pass the witness.

16 CROSS EXAMINATION

17 BY MR. JOYNER:

18 Q. Officer Fallon, is it Fallon?

19 A. Fallon.

20 Q. Fallon?

21 A. Yes.

22 Q. Who do you work with, sir?

23 A. The Dallas County Institute of Forensic
24 Sciences.

25 Q. Okay. That's State of Texas?

1 A. That's county.

2 Q. Dallas County?

3 A. Yes, sir.

4 Q. Okay. Now when you found the hair, I am
5 just curious about this, let me ask you, do you know
6 a Doctor I. C. Stone? Have you ever heard of him?

7 A. Yes, sir; he's my supervisor.

8 Q. Are you familiar with some of the articles
9 he's written --

10 A. Yes.

11 Q. -- about the value of hair?

12 A. Yes, sir.

13 Q. Okay. And are you aware that he indicates
14 that you can determine that negroid hair has
15 different characteristics from mongoloid hair or
16 caucasian hair or what have you?

17 A. Yes, sir.

18 Q. And the reason why where you have that cross
19 section is where you have some type of interracial
20 marriage or something like that, would it not, where
21 you couldn't determine well, this is negroid
22 characteristics or mongoloid characteristics or
23 caucasian characteristics; isn't that correct?

24 A. That's possible.

25 Q. Now you found a hair at the scene; is that

1 correct?

2 A. Yes, sir.

3 Q. Okay. And did you make a report, sir?

4 A. Yes.

5 Q. Did you bring that with you?

6 A. I have two different reports.

7 Q. At whose request did you make these samples?

8 A. Which samples are you speaking of?

9 Q. For the test of the defendant's hair?

10 A. By the prosecutor.

11 Q. Okay. All right. Now when you found -- you
12 found three hairs at the scene; is that correct?

13 A. Yes, sir.

14 Q. And then what did you do, what type of test
15 did you perform on that hair?

16 A. It's a microscopic examination.

17 Q. Okay. And that's where you take a little
18 microscope and you are looking down at the hair;
19 right?

20 A. That's correct.

21 Q. And then did you make any decision in terms
22 of what type of hair it was?

23 A. No; I didn't.

24 Q. Okay. By type I mean was it scalp, pubic or
25 what have you?

1 A. No; I didn't make that determination.

2 Q. Okay. Did you make a determination in terms
3 of what type of characteristics it had?

4 A. Yes; I noted in my report that it had
5 negroid characteristics.

6 Q. Okay. And why would you note that it had
7 negroid characteristics?

8 A. Because whenever there is a case where a
9 different race was involved, then I will look
10 specifically for a foreign hair.

11 Q. Okay. So before you performed this test you
12 knew that whoever came in on that night, the
13 assailant, was black, right?

14 A. That's what I was told, that's correct.

15 Q. And when you did your microscopic analysis
16 it occurred to you that this had negroid
17 characteristics; is that correct?

18 A. That's correct.

19 Q. Okay. But you couldn't determine where the
20 hair came from; is that what you are telling the jury?

21 A. That is correct.

22 Q. Now your next procedure was to go get some
23 hair from the defendant; is that correct?

24 A. Yes, sir.

25 Q. And how many hairs did you say you got?

1 A. Approximately ten from the head and ten from
2 the pubic area.

3 Q. Why would you do that? Why would you take
4 ten from the head and ten from the pubic area?

5 A. So -- are you asking me why from the head or
6 why ten?

7 Q. Well, no -- why from the head, why would
8 you get -- why would you go to the head and then to
9 the pubic area?

10 A. Because I did not know whether or not the
11 hair was a pubic hair or a head hair.

12 Q. Are you saying that's the only type of hair
13 this could be?

14 A. No, sir, I am not saying that. Those are
15 the two standard samples that, that we can -- that
16 we take.

17 Q. Okay. Standard; are you talking about
18 policy or what?

19 A. More or less, that is correct; in other
20 words, we do not take hair from the armpit, hair from
21 the chest, hair from the back, et cetera; we only
22 take head and pubic hair.

23 Q. Why not?

24 A. Because then we would have -- we would get
25 in the problem of where on the body we would take it

1 from. Would we take it from each arm, the forearm,
2 the leg, the feet, everywhere, so we only take head
3 and pubic hair.

4 Q. Well, why were you performing these tests?
5 That's what I want to know. Why were you performing
6 these tests?

7 A. To determine if the hair found on the sheets
8 was the same microscopic characteristics as the
9 defendant's.

10 Q. Wait a minute now. Let me see your report.
11 You are saying microscopic characteristics, what do
12 you mean by that?

13 A. The characteristics that one observes when
14 you look under the microscope at medium and high
15 powers.

16 Q. So you were trying -- were you trying to
17 find out whether or not this was negro hair? Did the
18 defendant have negro hair? Is that what you are
19 talking about?

20 A. No, sir. I was comparing microscopic
21 characteristics. I do not use a race characteristics.
22 I do not believe that race characteristics are a very
23 reliable method.

24 Q. What about Mr. Stone, that's your supervisor,
25 right?

1 A. Yes.

2 Q. Have you ever heard any lectures about him
3 talking about that is reliable characteristics?

4 A. What he is speaking of in that article that
5 you are referring to is class characteristics that
6 blacks as a race tend to have a certain type of hair,
7 but from one individual to another individual, even
8 within the white race or the black race, there can be
9 tremendous variance in the characteristics of the
10 hair. Therefore, a white person may have
11 characteristics that are very similar to a black
12 person. Therefore, if I only have one hair I cannot
13 make a determination that that person was black
14 solely on the characteristics of his hair.

15 Q. Okay. So, in other words, you had one hair
16 and you knew that going in when you got ten hairs off
17 the scalp and the pubic hair and you knew at that
18 time that you couldn't make any determination at all?
19 Is that what you are telling us?

20 A. No, sir.

21 Q. Was it -- is it the hair didn't match up at
22 all to the Defendant, did you say that?

23 A. Yes, sir.

24 Q. That the hair that you had didn't match; is
25 that correct?

1 A. That's correct.

2 Q. And you didn't go because of policy, you say,
3 take any more hair from any parts of his body, is
4 that right, because of policy; right?

5 A. Take additional hair?

6 Q. Right.

7 A. This hair was taken on a search warrant; we
8 are not allowed to take any more samples after the
9 initial warrant.

10 Q. Wait. Wait a minute. Now you say you are
11 not allowed to take any more hair after what now?

12 A. That's what I understand to be the situation
13 and that is another reason why we take head and pubic
14 hair because we only get one chance to get what
15 samples we need. If we did not get enough hair the
16 first time, we could not get another sample.

17 Q. You could not. Now where do you get that
18 from? Did you ask the defendant whether or not he
19 would give you any more hair?

20 A. Unless we go and have permission from the
21 Defendant.

22 Q. But you didn't do that; did you?

23 A. No, sir.

24 Q. And Mr. Waller didn't object to you taking
25 any scalp hair or pubic hair in this case; did he?

1 A. No, sir.

2 Q. And once you looked at that microscope and
3 you found that hair, you found it had negro
4 characteristics; is that correct?

5 A. That's correct.

6 Q. Okay. And you knew Mr. Waller was black,
7 right?

8 A. Yes, sir.

9 Q. And you knew that there may be a possibility
10 that this may match up, right?

11 A. Yes, sir.

12 Q. And that's what you were looking for and it
13 did not match up; is that correct?

14 A. That's correct.

15 Q. And all of these fancy things about taking
16 on the part of the other body and everything, you are
17 saying the reason why I didn't do this is because of
18 policy; is that correct?

19 A. Not exactly policy, it's just not good
20 scientific technique.

21 Q. Okay. Are you familiar with the neutron
22 activation analysis test?

23 A. Yes, sir; I am.

24 Q. Did you perform one of those?

25 A. No, sir. I did not.

1 Q. Can you perform one of those?

2 A. No, sir. I cannot.

3 Q. Could you send it to any lab that may have
4 performed that? Is there any lab around here that
5 could have performed that type of thing?

6 A. It could be sent to a lab down at Texas A &
7 M University, however the statistical data that is
8 available for neutron activation has not been fully
9 accepted by everyone in the field working because the
10 man who did the original statistical work did it
11 solely on a Canadian population of white Canadians;
12 and therefore, not everybody believed that his
13 statistics are correct. He had -- no one had
14 verified them.

15 MR. JOYNER: Pass the witness.

16 THE COURT: Anything further?

17 MR. NANCARROW: That's all, Your Honor.

18 THE COURT: Don't need him any more?

19 MR. ANDERSON: No.

20 THE COURT: Go about your business.

21 MR. NANCARROW: The next witness won't be
22 available.

23 THE COURT: The doctor can't be here until in
24 the morning?

25 MR. NANCARROW: That's right.

1 THE COURT: Defense y'all be ready because we
2 are going to finish in the morning. The doctor,
3 there's a doctor needs to testify. He can't get
4 through this afternoon, but he will be here -- y'all
5 sit down -- he will be here at 9 o'clock in the
6 morning, so go about your business. Come in here and
7 assemble in the room you have been in by 9 please.
8 Right in here. You may use the door you have been
9 using or the first door to my right and we hope we
10 can conclude the case tomorrow.

11 Tonight do not discuss with your family or
12 your friends any of this testimony. That would be
13 improper for you to do that. You can tell them you
14 are on a jury, but that's all. When the case is over
15 with, you can discuss it or not discuss the case as
16 you like. With that instruction, I will see you in
17 the morning at 9 o'clock. Good night.

18 (Whereupon the Court stood in recess
19 until February 1, 1983; at which time,
20 the following proceedings were had:)

21 THE COURT: Bring the jury in.

22 (Whereupon the jury returned to the
23 courtroom and the following proceedings
24 were had:)

25 THE COURT: Proceed please, counsel.

1 Whereupon,

2 JAMES VARNER

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

7 DIRECT EXAMINATION

8 BY MR. NANCARROW:

9 Q. Could you state your name and speak loudly
10 so everyone can hear you?

11 A. Doctor James Varner.

12 Q. And you were sworn outside the presence of
13 the jury; were you not?

14 A. Yes.

15 Q. How are you employed, Doctor?

16 A. I'm a second year surgery resident at
17 Parkland Hospital.

18 Q. And what are your duties there?

19 A. I am primarily on the house staff there and
20 treat patients, Dallas County patients, at Parkland
21 Hospital and at times and in this instant was serving
22 in charge of the emergency room for admitting
23 patients to the surgery part, portion of the
24 emergency room and treating them there.

25 Q. All right. And what are your qualifications

1 for your job?

2 A. I graduated from University of Tennessee
3 Medical School in 1981 and have served as a resident
4 at Parkland Hospital in surgery for a year and
5 approximately a year and six months.

6 Q. All right. Now back on November 2nd of 1982,
7 did you see a patient by the name of [REDACTED]

8 [REDACTED]
9 A. Yes; I did.

10 Q. And do you recall approximately what time
11 that was?

12 A. I saw him approximately 10, 10:30 that
13 morning, approximately 10:30 in the morning.

14 Q. Okay. What was the purpose of your
15 examination?

16 A. An alleged sexual assault.

17 Q. Okay. Did you perform an exam on him?

18 A. Yes; I did.

19 Q. What does your exam entail?

20 A. Examination appeared [REDACTED]
21 [REDACTED] that was -- the
22 only positive findings that I noted on my examination
23 were [REDACTED]

24 [REDACTED] There were as well as [REDACTED]
25 [REDACTED] and those are the only

1 positive findings I had at that time.

2 Q. What do you mean by patulous rectum?

3 A. Well, patulous rectum or a dilated rectum is
4 a rectum that may be found soon after defecation.
5 The child had not defecated in the recent past at the
6 time of the examination or a rectum which had been
7 forcibly dilated which can occur in medical
8 circumstances under anesthesia sometimes when a
9 person has a rectal stricture and you wish to dilate
10 them or if an object has been forcibly pushed up the
11 rectum.

12 Q. Okay. So your findings would have been
13 consistent with some sort of penetration?

14 A. It could be consistent with that, yes.

15 Q. And the lacerations or abrasions on the
16 wrists, would that be consistent with having been
17 tied up?

18 A. It could be consistent with that.

19 Q. Okay. Now did you after your physical
20 examination also obtain some specimens from [REDACTED]

21 [REDACTED]?

22 A. Yes. As is required of us and in my
23 position as second year resident in the emergency
24 room we are provided with a packet, a sexual assault
25 packet, and are required to obtain specimens from the

1 victim. These include a rectal smear and a rectal
2 swab, a blood specimen, clippings of pubic hair and
3 pieces of clothing and the patient at this time did
4 not have his own clothing with him. This was not
5 obtained.

6 Q. Okay. So you obtained anal swab, anal smear
7 and several items and submitted them. What do you do
8 with them once you obtain them?

9 A. These are taken by me and in addition to the
10 report to a lock box in the emergency room and
11 deposited at that point.

12 Q. Okay. Is there limited access to that lock
13 box there at the hospital?

14 A. As I understand it the only access is by the
15 forensic laboratory and I do not have a key and I do
16 not believe anyone else in the emergency room has a
17 key to the box.

18 Q. And so the forensic laboratory, they come out
19 and pick up the samples that you obtained?

20 A. Yes; they did.

21 Q. And, Doctor, did you make a report of your
22 examination in this case?

23 A. Yes, I did.

24 MR. NANCARROW: We pass the witness and
25 tender to defense counsel a copy of this doctor's

1 report.

2 THE COURT: Do you have any questions you
3 want to ask the doctor?

4 MR. ANDERSON: My witness now?

5 THE COURT: Yes.

6 MR. ANDERSON: I am sorry.

7 CROSS EXAMINATION

8 BY MR. ANDERSON:

9 Q. Doctor Varner, my name is Stanley Anderson.
10 I represent the accused James Douglas Waller. I just
11 have a couple of questions for you, sir.

12 A. Sure.

13 Q. Doctor Varner, do you have any personal
14 knowledge as to the guilt or innocence of James
15 Douglas Waller?

16 A. No; I do not.

17 Q. You are not telling this jury that James
18 sexually assaulted [REDACTED]; are you?

19 A. I am not.

20 MR. ANDERSON: Nothing further, Your Honor.

21 THE COURT: Thank you, Doctor.

22 MR. NANCARROW: May this witness be excused?

23 MR. ANDERSON: No objections.

24 THE COURT: Go about your business.

25 THE WITNESS: Thanks.