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Court. And I'm not asking you to make a ruling on that right now, but that would be our request.

We're ready to proceed with our two o'clock witness, Mr. Rodwell.

THE COURT: All right. Well, bring in the jury.

COURT DEPUTY: The whole jury, Judge?

THE COURT: Yeah.

(Jury present and seated in jury box at 2:07 p.m.)

THE COURT: Counsel waive polling?

MR. BARR: Yes, Judge.

THE COURT: All right. You may proceed with further proof in support of the Defense.

MR. BARR: Mr. Thomas Rodwell, please.

COURT DEPUTY: Raise your right hand, please, face the clerk to be sworn.

T H O M A S R O D W E L L, called herein as a witness, having first been duly sworn, testified as follows:

COURT DEPUTY: State your name in full and spell your last for the Court.

THE WITNESS: Thomas R. Rodwell,

R O D W E L L.

DIRECT EXAMINATION

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2 BY MR. BARR:

3 Q. Good afternoon, Mr. Rodwell. What is your
4 employment, sir?

5 A. I work at the Monroe County Public Safety Lab.

6 Q. And what is your current title?

7 A. Currently I'm the Administrator of the lab.

8 Q. And were you so employed during the month of
9 January of 1996?

10 A. Yes, I was employed as the forensic chemist in the
11 serology department at that time.

12 Q. And how long have you been employed by the Monroe
13 County Public Safety Laboratory?

14 A. Since 1989.

15 Q. And could you state -- you are a forensic chemist?

16 A. Yes.

17 Q. And could you state for the jury your education and
18 qualifications?

19 A. Yes. I have a Bachelor's Degree in Biology, a
20 Master's Degree in Physiology. I've also attended various
21 schools and seminars related to forensic serology.

22 Q. I believe that you're aware, Mr. Rodwell, of the
23 case we're involved in here in this courtroom, People of the
24 State of New York against Douglas Warney. Did you perform
25 any of your services in connection with exhibits in this

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2 case?

3 A. Yes, I did.

4 Q. And did you make reports -- did you generate
5 reports as a result of lab work you did?

6 A. Yes.

7 Q. And did you take and keep notes of your lab work?

8 A. Yes, I did, sir.

9 MR. BARR: I would like to have a couple of
10 exhibits marked.11 THE COURT: Just let me ask one question. You
12 mentioned serology.

13 THE WITNESS: Yes.

14 THE COURT: You're a forensic serologist?

15 THE WITNESS: Yes.

16 THE COURT: Why don't you tell us what a
17 serologist is and what serology is.18 THE WITNESS: Forensic serology deals with
19 identification and characterization of biological
20 fluids such as blood, semen, urine, saliva, that
21 type of nature.

22 THE COURT: Thank you.

23 DEFENDANT'S EXHIBIT Q - LAB REPORT - AUTOPSY
24 BLOOD/W. BEASON - WAS MARKED FOR IDENTIFICATION.

25 DEFENDANT'S EXHIBIT R - LAB REPORT - BLOOD/D.

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WARNEY - WAS MARKED FOR IDENTIFICATION.

Q. Mr. Rodwell, in the investigation of the death of Mr. [REDACTED], were there certain items of physical evidence that were delivered to the Monroe County Public Safety Laboratory by the Rochester Police Department?

A. Yes, there were.

Q. And these were, were they not, items that contained stains of some kind that were suspected bloodstains?

A. Yes.

Q. In preparation for the test that you were to conduct on these exhibits, did you obtain true blood samples from the victim, [REDACTED], as well as the accused person, Douglas Warney?

A. Yes, I did.

Q. I would like to show you exhibits; first of all, Exhibit Q. Can you identify what that is?

A. Yes, this is a report that was generated from our lab concerning the autopsy blood from one [REDACTED]

Q. And showing you Exhibit R, can you identify what that is?

A. That is a report generated from our lab concerning the blood of one Douglas Warney.

Q. Thank you. Now, Mr. Rodwell, you certainly can refer to your notes, here, if you need to. Based upon the

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testing that you did on the blood of the victim, [REDACTED],
[REDACTED], did you determine the character and type of this
blood?

A. Yes, I did.

Q. And can you describe that result to the jury?

A. Yes, when I characterize a bloodstain, I look for
genetic factors of individuality. One of these factors most
of us is aware of is simple A-B-O typing. All of us as
humans have a type of blood in the A-B-O system, the types
being Type A, Type B, Type AB or Type O. We can also further
characterize a blood sample by looking at something called
polymorphic protein enzymes. What these enzymes are are
molecules of protein found on red blood cells of all human
beings, the only difference is between different people these
proteins exist in slightly different forms. What form an
individual has depends on the genetic material he inherits
from his parents. Using a technique called electrophoresis,
I can characterize a bloodstain or blood sample and look at
six of these polymorphic enzymes and determine what forms
these enzymes exist. I then will go to, say, a population
table and determine what percent of the population would have
a certain A-B-O type and these certain enzyme forms together.

Q. Did you do that with the blood submitted to you
from the victim, [REDACTED]?

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2 A. Yes, I did.

3 Q. And what were your results?

4 A. He was an A-B-O type O, and the first enzyme that
5 we look at is something called glyoxalase I, which I'll refer
6 to as GLO I; the second one is called esterase D, which I'll
7 refer to as ESD; phosphoglucomutase, which I'll refer to as
8 PGM is the third enzyme; adenosine deaminase, ADA, is the
9 fourth enzyme I look at; erythrocyte acid phosphatase or EAP
10 is the fifth enzyme; and the sixth one, finally, is adenylate
11 kinase, which I refer to as AK.

12 Mr. [REDACTED] blood, which was a GLO I in the form of
13 2-1, he was ESD in the form of 1-1, PGM was in the form of
14 2-1, ADA was in the form of 1-1, EAP was in the form of B, as
15 in boy, and AK was in the form of 1-1.

16 Q. And did you perform the same tests as to the blood
17 submitted to the lab from Douglas Warney?

18 A. Yes, I did.

19 Q. And what were the results of your testing?

20 A. He was a Type A in the A-B-O system. GLO I, he was
21 a 1-1, ESD he was a 2-1, PGM he was a 2-1, ADA he was a 2-1,
22 EAP he was a B, as in boy, and AK he was a 1-1.

23 Q. These two individuals would have basically
24 different type bloods; is that correct?

25 A. That's correct.

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2 MR. BARR: I would like to have two exhibits
3 marked, please.

4 DEFENDANT'S EXHIBIT S - LAB REPORT RE: CRIME SCENE
5 - WAS MARKED FOR IDENTIFICATION.

6 DEFENDANT'S EXHIBIT T - LAB REPORT RE: VICTIM'S
7 CLOTHES - WAS MARKED FOR IDENTIFICATION.

8 Q. Mr. Rodwell, I show you two more exhibits. This is
9 Exhibit T, which is two pages. Can you identify what that
10 is?

11 A. Yes, this is a lab report generated by our lab
12 concerning items of clothing brought in by RPD from the
13 Medical Examiner's Office, the victim being one [REDACTED]

14 [REDACTED]
15 Q. And Exhibit S?

16 A. This was a lab report generated by our lab
17 concerning clothing, bedding and towel brought in from a
18 house from 366 Chili Avenue.

19 Q. The Exhibit T, the clothing of [REDACTED] I
20 believe that that corresponds to your Lab No. 0129?

21 A. Yes.

22 Q. And what were the items that you ran tests on under
23 this lab number?

24 A. There was a night shirt, a hair piece, some blue
25 socks, a black hair net thing and an athletic supporter, as

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well as some fingernail clippings.

Q. And can you briefly provide us with your results from the testing as to these stains on these items?

A. Yes, I did look at the night shirt, I sampled the stain in the left chest area and did a polymorphic enzyme analysis. The forms were GLO I, 2-1, ESD 1-1, PGM, 2-1, ADA, 1-1, EAP B, as in boy, and AK 1-1.

Q. And can you state to a reasonable degree of scientific certainty as to whose blood that was on the nightgown?

A. It was con -- the enzyme forms were consistent with the victim, [REDACTED], blood profile.

Q. And I believe that no tests were performed on the wig, the socks or the black hair net?

A. That's correct.

Q. And I think the sixth item would have been the fingernail clippings?

A. That's correct.

Q. And what were your results there?

A. There was some red-brownish material adhered to the clippings which I determined to be human blood. There was insufficient material for further characterization.

Q. So as to those items that were tested, you could not identify any bloodstains belonging to anyone other than

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[REDACTED] is that correct?

A. Any bloodstain -- bloodstain I did get were consistent with the enzyme forms from the victim.

Q. Now, Exhibit S, that corresponds I believe with your Lab No. 0075?

A. That's correct.

Q. And could you tell the jury what items you tested that have been delivered to the lab under that lab number?

A. Yes. There was several pieces of paper submitted that had red brown droplets adhered to it. There was a faucet cover with reddish-brown stains adhered, there was blue tissue wrapped in a bandage-type structure that had red-brown stains adhered, there was also a blue towel with red-brown stains. There was a blue and white shirt with some stain adhered, an off-white-colored shirt with red-brown stains adhered, and some tissue paper that had some stains adhered and some other items for trace analysis section.

Q. As to the second item, the two pieces of paper with red-brown droplets adhered, what were your test results as to that?

A. Once again, due to the limited amount of sample available, I was only able to determine that they were human blood samples.

Q. The number -- Item No. 3 was the faucet cover with

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2 red-brown stains, and what were your results as a result of
3 your test on that item?

4 A. I attempted the polymorphic enzyme analysis;
5 however, the results were inconclusive.

6 Q. Now, as to Item No. 4, this was the -- you
7 identified as the blue tissue paper wrapped in some type of a
8 bandage. What were your test results as to that?

9 A. I was able to resolve all six enzyme forms. GLO I
10 was in a form of 2-1, ESD in the form of 2-1, PGM in the form
11 of 1-1, ADA in the form of 1-1, EAP in the form of B, as in
12 boy, and AK in the form of 1-1.

13 Q. And in making the comparisons with your findings
14 there and your two known blood samples, what conclusions were
15 you able to draw to a reasonable degree of scientific
16 certainty?

17 A. That the blood deposited on the blue tissue could
18 not have come from either the Defendant, Mr. Warney, or the
19 victim, Mr. [REDACTED]

20 Q. Item No. 5 was a blue towel with red-brown stains.
21 What were your results there?

22 A. Once again, the GLO I was in the form of a 2-1, ESD
23 in the form of 2-1, PGM in the form of 1-1, ADA in the form
24 of 1-1, EAP in the form of B, as in boy, and AK in the form
25 of 1-1.

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Q. And what conclusions were you able to draw from comparing that with the known blood samples to a reasonable degree of scientific certainty?

A. The blood could not have been deposited by the victim nor the suspect.

Q. Item No. 6 was a blue and white shirt with stains. What results, if any, did you have on that?

A. I was able to only resolve one enzyme form, ESD in the form of 1-1.

Q. So you could not draw any conclusions from that?

A. Mr. [REDACTED] form, that enzyme is in the form of 1-1. Mr. Warney's form is in the form of 2-1; therefore, it's possible the enzyme form from that garment is consistent with the enzyme form from the victim, but not from the suspect.

Q. And Item No. 7 was a sheet, a white, off-white in color, sheet and what were your results as to that?

A. I was able to resolve several enzymes, Stain 1, glyoxalase in the form of 2-1, ESD in the form of 1-1, PGM in the form of 1-1, ADA in the form of 1-1, EAP in the form of C, as in Charlie, and AK was inconclusive. I took a stain right next to that one and was able to resolve three enzymes; ADA in the form of 1-1, EAP in the form of B as in boy, and AK in the form of 1-1.

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2 Q. And what conclusions could you draw from that to a
3 reasonable degree of scientific certainty?

4 A. In this particular case, the Stain No. 1 on the
5 sheet, all five enzymes, with the exception of EAP, match
6 that of the victim. The difference between an EAP C and
7 EAP B is a matter of band intensive when I develop the
8 electrophoresis plate. Sometimes various body fluid or
9 detergents can affect the results. I, therefore, took the
10 stain No. 2, sufficient enough EAP resolved itself as B. In
11 forensic serology, I have to report all my report, so I have
12 to report that as an EAP C.

13 Q. I believe that the balance of the items submitted
14 were only for trace analysis, meaning a trace of blood?

15 A. Trace analysis is hair and fiber comparisons.

16 Q. Oh, I'm sorry. And on Item 11, that was a paper
17 bag containing, I guess, miscellaneous tissues, plastic on a
18 newspaper; what results did you obtain from that?

19 A. On one of the tissues that had the stains on it, I
20 was able to determine that there was a faint reddish-brown
21 substance that was human blood and also found spermatozoa or
22 sperm on one of the tissues.

23 Q. And you could not make any indications with either
24 party?

25 A. No.

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2 MR. BARR: I would like to have two more
3 exhibits marked, please.

4 DEFENDANT'S EXHIBIT U - LAB REPORT (SNEAKERS) - WAS
5 MARKED FOR IDENTIFICATION.

6 DEFENDANT'S EXHIBIT V - LAB REPORT (SHOES) - WAS
7 MARKED FOR IDENTIFICATION.

8 Q. Mr. Rodwell, I'm showing you Exhibit U, can you
9 identify what that is?

10 A. Yes, it's a lab report generated from our lab
11 concerning a pair of sneakers taken from one Audrey Leone in
12 connection with this case.

13 Q. And Exhibit V?

14 A. A pair of the shoes from one [REDACTED] lab
15 report, generated from our lab concerning a pair of shoes,
16 I'm sorry, from -- doesn't really say who the shoes are from,
17 sorry.

18 Q. That's a pair of black and brown boots?

19 A. Yes.

20 Q. And the -- your -- or Exhibit U, that conforms with
21 your lab report 0127?

22 A. Yes.

23 Q. And what were your -- that was on sneakers provided
24 to you by one Audrey Leone. What were your test results on
25 that object or those objects?

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2 MR. KEENAN: Your Honor, at this time I would
3 like to object. I didn't object that Mr. Barr
4 didn't bring in the officer who collected the blood
5 samples, and so on, but now he's attempting to
6 introduce results where no chain of custody on
7 these exhibits was ever established by indicating
8 who collected these, what conditions they were in,
9 how they were submitted. On these next two reports
10 I will object. I could have on the other ones, but
11 I didn't. On these, he has to prove a chain of
12 custody. There has been no reference to these in
13 the record by any witness.

14 THE COURT: You want to be heard, chain of
15 custody is, of course, required to determine --

16 MR. BARR: Yes, Judge. That would be by the
17 Rochester Police evidence technicians. I don't
18 have those witnesses present to offer that
19 testimony and did not elicit that testimony from
20 the technicians when they testified. So I don't
21 know -- I can't promise the Court that there will
22 be a subsequent connection.

23 THE COURT: Sustain the objection but leaving
24 you the right to go further if you have the
25 opportunity to do so with foundational chain of

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custody evidence.

MR. BARR: All right.

THE COURT: Sustained.

Q. I'd like to leave the subject, then, by simply asking Mr. Rodwell, with reference to Lab No. 0127, you did, did you not, perform tests on a pair of white sneakers to determine the presence or absence of blood?

A. Yes, I did.

Q. And with reference to Exhibit V, which is your lab number, I believe, 0177, you did perform tests, did you not, for the presence or absence of blood on a pair of black and brown boots?

A. Yes, I did.

MR. BARR: Just one final one.

DEFENDANT'S EXHIBIT W - LAB REPORT (KNIFE) - WAS MARKED FOR IDENTIFICATION.

Q. Mr. Rodwell, I would like to show you Exhibit W and ask you if I can identify what that is?

A. This is a lab report generated by our lab concerning a knife that was taken from the bathroom at 366 Chili Avenue.

Q. Thank you. And did you perform tests on the red-brown stains that were on the blade of that knife?

A. Yes, I did.

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Q. And what were your test results? I believe this corresponds with your Lab No. 0256?

A. Yes. The stains were blood Type O, and I was able to resolve five out of the six enzymes, GLO I being inconclusive. ESD in the form of 1-1, PGM in the form of 2-1, ADA in the form of 1-1, EAP in the form of B, as in boy, and AK in the form of 1-1.

Q. And what conclusion can you state to a reasonable degree of scientific certainty as to the, whose blood that was on that knife blade?

A. The five enzyme forms I was able to resolve, along with the A-B-O type, were consistent with the victim's A-B-O type and five enzyme forms that I was able to resolve.

MR. BARR: Judge, could counsel approach the bench for just a minute?

THE COURT: Very well.

(There was a conference at the bench between Court and counsel out of the hearing of the court reporter and jury.)

MR. BARR: I have no further questions, Judge.

THE COURT: Cross-examination?

MR. KEENAN: Yes.

CROSS-EXAMINATION

BY MR. KEENAN:

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Q. Mr. Rodwell, first of all, let me be the first person to congratulate you on your recent appointment as Director of the Laboratory. Congratulations.

A. Thank you.

Q. Now, Mr. Barr asked you about a number of analyses you did on items that were submitted to you from the Rochester Police Department in connection with this case; is that correct?

A. Yes.

Q. He was speaking to you about the white sheet, which was No. 7 under your report 0075, and you indicated that you had to report that one EAP enzyme as C, but based on your experience, the blood on that sheet was consistent with Mr. [REDACTED]; is that correct?

A. The other five enzymes were, the sheet, I believe, from talking to the police technician, was found underneath the body. It has been my experience in the past, like I said, that certain biological fluids, such as bile or certain detergents in clothing and in fabrics sometimes will influence enzyme results or intensity of bands. I still had to type that enzyme as a form C because that's what it appeared to be.

Q. The nightshirt or the clothing you examined, the blood on those items were consistent with Mr. [REDACTED] is

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2 that correct?

3 A. Yes.

4 Q. And the knife that was suspected of being the
5 murder weapon was consistent in five enzymes; is that
6 correct?

7 A. Yes, it was.

8 Q. And you weren't able to get the sixth enzyme?

9 A. That's correct.

10 Q. But all the enzymes were consistent with
11 Mr. [REDACTED] blood?

12 A. That's correct.

13 Q. Now, you indicated there was two items found in the
14 house where blood that was found that was neither
15 Mr. [REDACTED] or the Defendant's blood and you indicated there
16 was a tissue, you describe it as a bandage tissue and also a
17 towel, a blue towel; is that correct?

18 A. That's correct.

19 Q. Now, there was a number of other items, blood
20 droplets throughout the house, suspected bloodstain on the
21 faucet, blood on a -- or blood drops on a paper and the blood
22 under -- that was found underneath the fingernails of

23 Mr. [REDACTED] the victim, you couldn't tell whose blood that
24 was?

25 A. That's correct.

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Q. So it may well have been the Defendant's blood, you just didn't have enough of a sample to make that determination?

A. That's correct.

Q. Now, with respect to those -- the two stains I just mentioned, the tissue and the towel, now, when you did -- performed your screening tests and then your enzyme test, are you able to determine when those stains are left on a particular item?

A. No.

Q. Now, so let's say, suppose Mr. [REDACTED] had someone at his house who cut himself shaving five weeks before, four weeks before he was killed, would you still be able to obtain a blood result? Did you have enough blood to do that?

A. Yes, there was enough blood there. As far as a time factor, it's very difficult to -- you can't put a precise date on when blood was deposited at a stain. Environmental influences such as sunlight, heat, humidity, that type of thing, will decompose proteins which I do my analysis with, so I can't say with any scientific accuracy when it was deposited there. I can say it probably wouldn't be more than a year because a year would be stretching as far as detecting resolvable proteins, but I really can't tell you when the stains were deposited, no.

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Q. There is really no way for you to tell?

A. No.

Q. Would it make a difference as to whether a stain is left outside in the rain or snow or whether it's in a controlled environment such as this?

A. Well, obviously if it's left out in the rain or snow, you're going to have some rather blotting it off, depends on the concentration of the original stain. If it was the middle of July, 90 percent humidity, hot sunlight, proteins will degrade relatively rapidly; but, once again, you still cannot date a stain, per se.

MR. KEENAN: All right. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. BARR:

Q. Mr. Rodwell, I would like to show you these two photographs which are Exhibits 19 and 20. I doubt that you were at the scene at 366 Chili Avenue, were you?

A. No, I was not.

Q. All right. There are items depicted in this photograph and I would like to ask you if you would look at those two photographs and if you can identify in either or both of those photographs the item that you describe as blue tissues wrapped in a bandage form?

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A. Yes, appears to be this Exhibit 20.

Q. And can you see what appears to be that same item in Exhibit 19?

A. It appears to be this, right here.

Q. You're pointing over to the left-hand side of the sink as shown in that photograph?

A. Yes, sir.

Q. In Exhibit No. 19, do you see anything that might qualify as a blue towel?

A. Yes, I do.

Q. And there is one that appears in that photograph?

A. There may be actually two here.

Q. One on either side of the sink?

A. That's correct.

MR. BARR: Thank you. I have no further questions.

MR. KEENAN: Nothing further, Mr. Rodwell.

THE COURT: Thank you. You may step down.

We'll ask the jury to step out for just five minutes.

(Jury was excused from the courtroom at 2:47 p.m.)

THE COURT: Anything further we want to take up?

MR. BARR: Do you want to discuss the