

1 Mr. David Pomposini, Your Honor.

2 THE COURT: Raise your right hand, please.

3 (Mr. Pomposini was sworn.)

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6
7 DAVID ALLEN POMPOSINI, called as a witness on behalf
8 of the Commonwealth, having been first duly sworn, was
9 examined and testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MISS HUTCHENS:

14 Q Good afternoon. Would you state your full
15 name for the Court, please, and spell your last name for
16 the benefit of the court reporter.

17 A David Allen Pomposini, P-o-m-p-o-s-i-n-i.

18 Q What is your occupation, sir?

19 A I'm a forensic scientist.

20 Q And where are you employed?

21 A I'm employed with the Bureau of Forensic
22 Science at the Tidewater Regional Forensic Laboratory which
23 is located in Norfolk, Virginia.

24 Q Could you please familiarize the ladies and
25 gentlemen of the jury with your training that pertains to

1 your occupation?

2 MR. LEGLER: I'll stipulate to his
3 qualifications.

4 THE COURT: Expert -- in what are you
5 proffering him as an expert?

6 MISS HUTCHENS: Serology.

7 MR. LEGLER: No problem, Judge.

8 THE COURT: All right. Ladies and gentlemen,
9 Mr. Pomposini has been declared to be an expert
10 in the area of serology; and basically that means
11 he can give his opinion testimony in his field as
12 opposed to simply factual testimony given by a
13 layman. He may testify as to his expert opinion.
14 All right.

15

16 BY MISS HUTCHENS:

17 Q How long have you been a forensic scientist
18 with the Bureau of Forensic Science in Norfolk, Virginia,
19 sir?

20 A Since December of 1981.

21 Q Now, pursuant to your employment as a forensic
22 scientist, in particular a serologist for the Bureau of
23 Forensic Science in Norfolk, did you have occasion to receive
24 three physical evidence recovery kits as well as a saliva
25 sample -- those three recovery kits belonging to, number

1 one, a [REDACTED] -- on January 29, 1988?

2 A Yes, ma'am.

3 Q A Troy Webb -- received February 19, 1988?

4 A Yes, ma'am.

5 Q A Mark Shugdinis -- received June 30, 1988?

6 A Yes, ma'am.

7 Q And saliva samples from a Troy Webb received
8 October 12, 1988?

9 A Yes, ma'am.

10 THE COURT: Would they be Commonwealth's
11 Exhibits 4 through 7?

12 MISS HUTCHENS: Yes, sir.

13
14 BY MISS HUTCHENS:

15 Q Mr. Pomposini, if you could just review the
16 markings -- there's no necessity to break into the kit,
17 but if you could review all the markings on each of those
18 starting with the bottom and working your way up. This
19 being Commonwealth's Exhibit Number 4. Do you recognize
20 that item?

21 A Yes, ma'am. This is Item Number 1, which
22 was received in the laboratory as the physical evidence
23 recovery kit of [REDACTED]; and may I mention that when
24 the evidence is received in the laboratory, it was assigned
25 a laboratory case number and an item number and the initials

1 of the date it was received; and the markings are so and
2 so is the lab number.

3 This case lab number assigned was T-8800450.

4 Q Okay. The next item which has been introduced
5 into evidence, which is Commonwealth Exhibit 5, do you
6 recognize that?

7 A Yes, ma'am. Again, this was received in the
8 laboratory. It's T-8800450. This was Item Number 2, and
9 this was a physical evidence recovery kit from Mr. Webb.

10 Q All right. The next item would be
11 Commonwealth Exhibit Number 6. Do you recognize that item?

12 A Yes, ma'am. Again, it would be laboratory
13 case Number T-8800450. This is Item Number 3, and this
14 was a physical evidence recovery kit from Mr. Shugdinis.

15 Q And lastly, Commonwealth Number 7?

16 A And, again, the laboratory case number is
17 assigned. It was T-8800450, which was Item 4; and this
18 was a saliva sample from Mr. Webb.

19 Q Did you ever have an opportunity to review
20 all of these items and examine them pursuant to your
21 employment as a forensic serologist?

22 A Yes, ma'am.

23 Q All right. Can you explain to the ladies
24 and gentlemen of the jury what is in a physical evidence
25 recovery kit and what purpose do those items serve in your

1 occupation as a serologist?

2 A A physical evidence recovery kit is generally
3 submitted from a victim of an alleged sexual assault. It
4 will contain normally a blood sample; and this blood sample
5 is submitted for the purpose of identifying that individual,
6 the ABO type, whether or not we can tell from the blood
7 if it is a secreter or not and also enzymes.

8 If you are familiar with the ABO system, there
9 are four general types in the population. You are either
10 Type O, Type A, Type B or Type AB; and in addition to being
11 that in the ABO system, is what is known as whether you
12 are a secreter or a nonsecreter; and a secreter is an
13 individual who expresses their blood type in their body
14 fluids -- such as seminal fluid, vaginal fluid and saliva.

15 For instance, I'm a Type O secreter. This
16 means I express my ABO Type O in my seminal fluid and saliva.

17 And there is another class of individuals
18 known as nonsecreters. These individuals in the general
19 population do not express their blood type in their body
20 fluid regardless of their ABO type. So the blood enables
21 us to determine whether your an ABO, and sometimes it will
22 tell us your secreter status.

23 As I mentioned about enzymes, it as well
24 determines what type of enzymes you are. There are certain
25 enzymes which are found in vaginal fluid or seminal fluid

1 which help us further break down the ABO stain. But not
2 only can we tell you whether you're an ABO type -- certain
3 type, but we can also tell what enzyme type you are as well.
4 This gives us an indication what that particular person's
5 enzyme type is.

6 Also, on the victim PERK kit is submitted
7 swabbings and smears on where the alleged assault took place.
8 Swabbings are taken where the alleged offense took place,
9 and on those swabs is where the examiner will examine to
10 see whether or not we found any seminal fluids. Obviously,
11 if we find seminal fluid and this is foreign to the victim,
12 we must proceed to type it and try to determine who the
13 cross-PERK would be on that particular swab. A smear is
14 made of that swab just for record sake to show that that
15 swab made that smear.

16 There are also control swabs that are
17 submitted to show that indeed it's the swab that the seminal
18 material or the vaginal material on the swab that is giving
19 us the reaction and not the swab itself. So the control
20 swab would be submitted as well. You also have in there
21 saliva swabs.

22 Now, as I mentioned to you earlier about the
23 blood -- looking at the blood for ABO and trying to determine
24 from there whether you're a secreter or not, the saliva
25 indicates to us in conjunction with your blood what it is

1 you actually secrete of the ABO type. So in conjunction
2 with the blood and the saliva, this determines your secrete
3 status. So those are the samples of the swabs and smears
4 that were submitted.

5 Also, on the PERK kit, you also will find
6 a pair of panties, which is actually something that's been
7 worn immediately after the assault. These are supposed
8 to be submitted with the victim's PERK. Sometimes these
9 are submitted separately, but generally they are submitted
10 with the victim's PERK.

11 Also, in the victim's PERK kit will contain
12 known hair standards -- known head and pubic hair standards.
13 Along with that, you have combings of the pubic region;
14 and the premise is that when there is a change that takes
15 place -- if there's an assault that takes place in the pubic
16 region, there's a potential for hairs to transfer from the
17 perpetrator to the victim. So combings are taken of the
18 pubic region and submitted for analysis; but in order to
19 determine if there are any foreign hairs in those combings,
20 then we would have to have standards. So they are also
21 submitted -- the pubic standards.

22 Now, in reference to the other kits that were
23 submitted, they contained known standards of the victim
24 involved. So in order for I to make my comparison I needed
25 those standards from those individuals so I can ascertain

1 about the unknown.

2 MISS HUTCHENS: May I approach the witness,
3 Your Honor?

4 THE COURT: Is that going to be admitted?

5 MISS HUTCHENS: Yes, sir.

6 THE COURT: Go ahead and admit it. Any
7 objection, Mr. Legler?

8 MR. LEGLER: No objection. I have a copy.

9 THE COURT: Marked as 8.

10 (Marked in evidence by the Court as
11 Commonwealth's Exhibit Number 8.)

12
13 BY MISS HUTCHENS:

14 Q Mr. Pomposini, I'd like to show you a two-page
15 document entitled certificate of analysis document dated
16 October 17, 1988. If you could look at that two-page
17 document and tell us whether or not you recognize it?

18 A Yes, ma'am, I do.

19 Q Okay. And what is that document you have
20 before you?

21 A This is the certificate of analysis showing
22 my results and my conclusions from the examinations I
23 performed.

24 Q Okay. And prior to preparing that certificate
25 of analysis, did you have all four items that have previously

1 been introduced into evidence that you've identified in
2 your presence in your lab for the analysis?

3 A Previously to this report?

4 Q When you prepared this, did you have all
5 four of these items?

6 A Yes, ma'am.

7 Q And had you had an opportunity to review them
8 and analyze them?

9 A Yes, ma'am.

10 Q Starting with Item Number 1, Mr. Pomposini,
11 can you tell the ladies and gentlemen of the jury when you
12 began coming up with your results of Item Number 1?
13 Starting with the hair analysis, what did you find?
14 What was Item Number 1, and what were your results?

15 A Item Number 1, which was the physical evidence
16 recovery kit from Miss [REDACTED], one hair consistent with
17 the pubic hairs from Miss [REDACTED] and different from
18 Mr. Webb and Mr. Shugdinis and one characteristically
19 Caucasian body hair were collected from the combings.

20 One hair consistent with the pubic hairs from
21 Miss [REDACTED] and different from Mr. Webb and Mr. Shugdinis
22 and one characteristically Caucasian body hair were collected
23 from the pair of panties.

24 Q Okay. So you found two hairs consistent with
25 her in her item?

1 A Correct. These hairs which were found on
2 the panties and in the combing could originate from
3 Miss [REDACTED] but did not originate from Mr. Webb or
4 Mr. Shugdiniš.

5 Q Now, Items 2, 3 and 4 -- did you have occasion
6 to review those items and prepare a table for typing such
7 things as ABO and the enzymes that you've explained to us?

8 A Yes, mā'am, I did.

9 Q Okay. If you could look at Page 2 of your
10 report and describe to the ladies and gentlemen of the jury
11 the results and how you prepared your table and the results.

12 A As I mentioned to you earlier about the ABO
13 system and secreter status, it was determined that
14 Miss [REDACTED] was Type O secreter, and she had PGM Type 1
15 and another enzyme called PPA Type 1.

16 Mr. Webb was determined to be a nonsecreter.
17 As I mentioned to you earlier, a nonsecreter is an
18 individual who does not express their blood type in their
19 body fluids in the ABO system, but he is PGM Type 1 and
20 a PPA Type 1.

21 Mr. Shugdiniš is a Type A secreter, which
22 means he expresses Type A in his body fluids in the ABO
23 system. He is PGM Type 2-1 and PPA Type 1.

24 THE COURT: Let me say, ladies and gentlemen,
25 you will have these exhibits in the jury deliberation

1 room with you, so you don't have to try to remember
2 each PPA and PGM. You will have it with you.

3 THE WITNESS: This I just read to you is the
4 standards of the items submitted to me for analysis
5 to determine what their ABO type, the secreter
6 status and the enzyme present in these individuals.

7 Now, as far as the unknowns are concerned,
8 in Item Number 1, which was the physical evidence
9 recovery kit from Miss [REDACTED], spermatozoa were
10 identified on the vaginal, cervical and thigh vulva
11 smears; and then typing was performed on the swabs.
12 The spermatozoa is the male reproductive cell. This
13 positively identifies the presence of seminal fluid;
14 and on the vaginal and cervical swabs, the ABO system,
15 Type A, was indicated and PGM Type 1 was indicated;
16 but no type was achieved with the PPA. On the thigh vulva
17 swabs, again, Type A was indicated and for PGM and
18 the PPA systems, no types were detected.

19 Spermatozoa also identified inside a pair
20 of panties at the crotch area, which was also
21 submitted with the physical evidence recovery kit
22 for Miss [REDACTED] -- Type Number 1 -- and ABO
23 system Type A was indicated from the spermatozoa,
24 which was found in the crotch area of the panties,
25 which identified the presence of seminal fluid.

1 PPA Type 1 was also identified in the stain but
2 no type was detected in the PGM.

3
4 BY MISS HUTCHENS:

5 Q Thank you.

6 And when you say none was identified in the
7 PPA or the PGM, what does that mean?

8 A Okay. What that referred to is that not all
9 stains are we able to get all results, and the reasons for
10 that being is that the enzymes either deteriorate or we
11 can't detect it anywhere or there is just an insufficient
12 amount of it present, so we can't pick it up.

13 Q Okay. Based on your table, what was your
14 conclusion of your report, sir?

15 A In my conclusion, Troy Webb and Mark Shugdinis
16 are included as possible donors of the seminal fluid found
17 on the vaginal, cervical and thigh vulva swabs and inside
18 the pair of panties at the crotch area.

19 MISS HUTCHENS: I have no further questions
20 of Mr. Pomposini, Your Honor. Mr. Legler may have
21 some.

22 THE COURT: Mr. Legler.
23
24
25

CROSS-EXAMINATION

1
2
3 BY MR. LEGLER:

4 Q Mr. Pomposini, I think we've crossed swords
5 before, but I'll try to be brief and not ask a lot of
6 questions but -- and not be surprised at the answers. It
7 will save us a lot of time and me embarrassment I hope.

8 If I understand this correctly, [REDACTED]
9 is a blood Type O?

10 A O is correct.

11 Q And you found in the seminal fluid evidence
12 of Type A secretions from her vaginal area, cervical and
13 thigh vulva area, crotch of her panties; is that correct?

14 A Correct.

15 Q And Shugdinis -- the ex-boyfriend -- your
16 tests show are Type A? Namely, the same type as all of
17 the findings; is that correct?

18 A I have found Type A. Correct.

19 Q Okay. Now, in your conclusion, you said --
20 I know you used the word donor like you're donating to a
21 charity -- but you said in your conclusion that Webb and
22 Shugdinis are included as possible donors of the seminal
23 fluid in the vaginal area and in the thigh area and in the
24 crotch of her panties; is that correct?

25 A Correct.

1 Q All right. Now, Webb, being a nonsecreter;
2 is that right?

3 A Correct.

4 Q What percent of the population approximately
5 are nonsecreter -- or should I say is a nonsecreter?

6 A Approximately, in the general population,
7 twenty percent are nonsecreters.

8 Q Okay. So where in this case you say that
9 Shugdinis and Webb are possible donors, actually twenty
10 percent of the population that are nonsecreters are in the
11 same status as Webb sitting here? Twenty percent of the
12 population being nonsecreters would be in that same status;
13 correct?

14 A Correct.

15 Q And all possible donors of sperm there, but
16 what you actually found was Type A sperm, and we know that
17 Shugdinis is Type A and is a secreter; correct?

18 A Yes.

19 Q And you don't know whether any sperm is in
20 there from a nonsecreter, or do you?

21 A Well, I don't -- no, I don't know whether
22 or not any sperm in there is from a nonsecreter but --

23 THE COURT: Nonsecreter?

24 THE WITNESS: From a nonsecreter.

25

1 BY MR. LEGLER:

2 Q Well, what I'm talking about -- you don't
3 know if there's any sperm in there from Webb or any of the
4 twenty percent that are nonsecreters; correct?

5 A It may or may not. That's correct.

6 Q The only thing you can say is that what you
7 did find in there is Type A; correct?

8 A Correct.

9 Q And you're saying your conclusion that Webb
10 and Shugdinis' Type A ex-boyfriend -- you say they're both
11 possible donors. That would be if both of them had sex
12 with her and Shugdinis has his Type A still in there; and
13 if there's some more sperm in there from a nonsecreter,
14 that's the only way you can get to that conclusion; correct?

15 A Yeah. You have to have more than one deposit
16 of seminal fluid present in order to incorporate or include
17 the nonsecreters as a possible contributor to this stain.

18 Q Okay. What -- what I'm saying is -- this
19 is probably not the best way to say this, but let's say
20 if you're mixing paint. This is the best way I can do it.
21 I'm sorry, folks.

22 Let's say you're mixing -- what colors mixed
23 together give us green? Some of the school teachers know,
24 and I've forgotten, but let's -- for the sake of argument --
25 say we mix blue and yellow -- okay? -- and we get green.

1 Use that as my example.

2 Let's say that Shugdinis is -- he's got blue
3 paint; and Webb has got yellow paint; and when they combine,
4 they give us green. Okay?

5 Now, if Shugdinis is Type A -- the blue paint --
6 and Webb is a nonsecreter -- I guess what I'm trying to
7 say -- trying to make this clear, and it isn't all that
8 clear.

9 You don't have to have any sperm in there
10 from Webb to find this Type A; correct?

11 A He being a nonsecreter, that's correct.

12 Q You don't have to have any of his sperm in
13 there? So it's not like the two of them combined gives
14 you something different? Like when you combine blue and
15 yellow, you won't get green and say, ah-ha. I've got a
16 combination here of A secretions and some nonsecreter. You
17 don't get that, do you? It's not like mixing paint?

18 A No. No, it's not like mixing paint; but maybe
19 I could clarify mixtures and masking and covering up a
20 secretion type. It may make it a lot simpler for them to
21 understand it.

22 Q Okay. Well, that's why I was going to the
23 paint because masking is an example.

24 A When you're talking about mixtures, masking
25 or covering up a secretion type can take place. Especially

1 when you have more than one body fluid present in a stain
2 such as seminal fluid, vaginal or saliva fluid.

3 What happens is that one particular blood
4 type can mask or cover another blood type. Both of those
5 types could be present, but the one masks the other, and
6 you only see one when you're doing your typing results,
7 but the other could still be there, and this is what is
8 occurring in this particular situation.

9 If you know that more than two seminal fluids
10 are present, you're going to have what is called a masking
11 effect or a covering up of a specific blood type; and an
12 example would be if I take an A person -- an A secreter
13 and take myself, which is a Type O secreter, if I would
14 take my seminal fluid and mix it with another seminal fluid
15 of Type A, when I go to type that stain, what it's going
16 to show me is just Type A. However, I know my Type O
17 is there; but what's happening is that the A, when you
18 combine it with an O, as an example, masks -- covers up
19 that secretion type.

20 The semen is still present. However, it's
21 indicating to me a Type A. This occurs when you work with
22 mixtures of body fluids knowing that you have a mixture
23 present -- more than one -- in that particular stain.
24 So this is what is known as covering up of secretion type.

25 Q Okay. But to get back to my question,

1 There is really no evidence from the lab tests that there's
2 any sperm in there from any nonsecreter? It's not like
3 it comes in as the yellow that will combine with the blue
4 to give you green? You can't say there's any sperm in there
5 from a nonsecreter; isn't that a fact?

6 A Okay. Now, you're just talking about the
7 ABO system; and as I mentioned earlier, with the nonsecreters,
8 you're not going to get a typing from the nonsecreters
9 because they don't express their blood type in their body
10 fluid. So nonsecreters can be present. You're not going
11 to be able to get the typing in the ABO system because they
12 do not express their blood type in their body fluid.

13 Q Well, I think we just said the same thing;
14 but you said it longer.

15 You can't say that there was any sperm in
16 there from a nonsecreter? Fact? You cannot say that?

17 A It can be consistent with the possibility
18 of a nonsecreter being present. I cannot definitely say --

19 Q Possible.

20 A -- that that is a nonsecreter only. No, I'm
21 not saying that. What I am saying is it is consistent with
22 a potential nonsecreter being present if you know that,
23 indeed, two or more seminal fluids are mixed in that
24 particular stain.

25 Q I guess what I'm also saying is what it is

1 also consistent with is Shugdinis had sex with the
2 so-called victim and left some A in there, and you can't
3 say that that's not all that's in there is just Shugdinis'
4 sperm; is that a fact?

5 You're saying it's possible. Sure, anything
6 is possible. We're talking about proof here. You can't
7 say that it's any more than a possibility that a nonsecreter
8 had sex with her; isn't that a fact? It's just a
9 possibility.

10 A If there -- it is possible that if two people
11 had sex, then that possibility exists. If only one person
12 had sex, then no, that possibility doesn't. You have to
13 have more than the one involved in order for this
14 possibility to occur.

15 Q In plain English -- I won't ask it again.
16 This will be the last shot.

17 You can't say it's anything other than
18 possible that Webb had sex with her and left this sperm
19 in there? No more than possibility, but we know some Type A
20 had sex with her and left his in there, don't we?

21 THE COURT: Which question do you want him
22 to answer?

23
24 BY MR. LEGLER:

25 Q Are they both true? Were -- all parts of

1 that question -- were they true?

2 A Yes, it's a possibility because I stated you
3 have to have two or more seminal fluids present in that
4 mixture. If that is indeed true, then, yes. There's one
5 possibility a nonsecret r can be present. Definitely an
6 A secret r is present because we found A which is foreign
7 to the victim.

8 MR. LEGLER: That's all the questions I have,
9 Your Honor.

10 THE COURT: Any redirect?

11 MISS HUTCHENS: No redirect, Your Honor.

12 THE COURT: All right. You may step down.

13 May he be excused?

14 MISS HUTCHENS: Yes.

15 THE COURT: Thank you, Mr. Pomposini. You
16 may be excused.

17 MISS HUTCHENS: Next, Your Honor, before
18 calling the next witness, there's another stipulation
19 I've been over with Mr. Legler in reference to
20 attempts that were made by the identification bureau
21 to take various fingerprints on the items that I
22 would like to read to the ladies and gentlemen of
23 the jury.

24 THE COURT: Is this a stipulation of fact
25 or evidence?