

bx 13614

VOLUME 2 OF 2 VOLUMES
IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA CRIMINAL DIVISION

Plaintiff, CC 8902462
1. Robbery
vs. 2. Recklessly Endangering
Another Person
7 DREW WHITLEY, 3. Violation of the Uniform
Firearms Act - Former
8 Defendant Convict Not to Own a
Firearm

CC 8902906
1. Criminal Homicide

Jury Trial Transcript

Filed by:
Ollie M. Holden,
Official Court Reporter

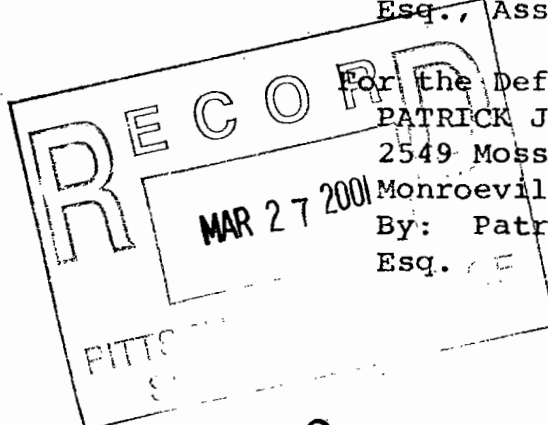
Trial Date:
July 18, 19, 20 & 21, 1989

Trial Judge:
Hon. Walter R. Little
and Jury

COUNSEL OF RECORD:

For the Commonwealth:
DISTRICT ATTORNEY
303 Courthouse
Pittsburgh, PA 15219
By: Nicholas Radoycis, Jr.,
Esq., Asst. District Attorney

For the Defendant:
PATRICK J. THOMASSEY, ESQ.
2549 Mosside Boulevard
Monroeville, PA 15146
By: Patrick J. Thomassey,
Esq.



1 Starr - Cross

2 - - -

3 (End of side bar proceedings.)

4 MR. THOMASSEY: Nothing else.

5 MR. RADOYCIS: Nothing else from
6 the Commonwealth.

7 THE COURT: You may step down.

8 MR. RADOYCIS: Dorothy Menges.

9 - - -

10 DOROTHY MENGES,

11 having been duly sworn, testified as follows:

12 - - -

13 DIRECT EXAMINATION

14 BY MR. RADOYCIS:

15 Q. State your full name and spell your last name.

16 A. Dorothy Menges, M-e-n-g-e-s.

17 Q. Would you tell the Court how you are employed.

18 A. I am employed as a criminalist, Forensic
19 Serology Section Laboratory Manager for the
20 Allegheny County Crime Laboratory.

21 Q. How long have you been so employed?

22 A. Approximately 16 years.

23 Q. And what are your responsibilities at the
24 Crime Lab?

25 A. I oversee the Serology Section which is

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- - -

primarily responsible for processing evidence, physiological evidence, physical evidence that is submitted in homicides and sexual assault cases as well as burglaries and robberies.

Q. Do you do hair analysis?

A. Yes.

Q. Is that under the microscope?

A. Yes.

Q. Tell the jury what your background and training in this area as well as your experience is.

A. Bachelor of Science and Doctorate in Chemistry from Carnegie-Mellon, Master of Science Degree in Forensic Chemistry, University of Pittsburgh. I attended a course at the F.B.I. Academy, Quantico, regarding forensic serology, and I have processed over 600 sexual assault cases and over a hundred fifty homicide cases in the last sixteen years.

Q. Have you been sworn and qualified as an expert in the field of forensics --

A. I believe. Say yes.

Q. -- with regard to hair analysis?

Menges - Direct

- - -

A. Yes.

MR. RADOYCIS: Voir dire as to qualifications.

MR. THOMASSEY: I have no problems with Mrs. Menges' qualifications.

THE COURT: Members of the jury, defense counsel has no questions as to Mrs. Menges' qualifications who is certified as an expert in the field of forensics.

Q. Mrs. Menges, did you have occasion to examine a number of exhibits, approximately 50 in number under the case name [REDACTED] Homicide, dated September 2, 1988, Laboratory Case #883126?

A. Yes, I have.

Q. Do you have that report with you?

A. Yes, I do.

Q. I'm going to ask you initially to turn to page 4, Exhibit Number 9, and would you tell the Court what that exhibit was, and perhaps this, and show you what has already been marked as Commonwealth's Exhibit Number 12, and ask

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if you have seen this before?

A. Yes, I have.

Q. Is this the item reflected in that section of your report?

A. Yes, it is.

Q. Would you tell the jury what your findings were with regard to Exhibit Number 9?

A. Dark brown colored stocking found in the Kennywood Parking Lot entrance, and it was marked first entrance Kennywood Boulevard, third metal pole on left 12 feet, 3 foot seven inches from the fence, on August 17, 1988, at 6:30 a.m. This is how the paper bag that it was packaged in was labeled.

Q. What were the findings upon your examination of that stocking?

A. First thing I did was examine the stocking, and apparently the top had been cut off, for blood stains or saliva, and I did not find any blood stains or saliva on this exhibit.

Q. Please continue.

A. Then I found 41 dark brown, very small, hair fragments that were imbedded within the mesh

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of the stocking, and they exhibited Negroid characteristics.

Q. What do you mean by "Negroid characteristics"?

A. When we examine hair, I can usually tell, if there's enough hair present, whether it is Caucasian origin, or Negroid, or in some cases Mongoleid origin, so we can tell the origin by looking at it microscopically.

Q. What was the longest hair fragment you found in that stocking?

A. The longest in that stocking, that Exhibit, was two millimeters long which would be approximately 1/16th of an inch in length. They were very nearby in where they were found in the stocking mesh, were near together. They were not all together. They were imbedded in the stocking. We had to use what is called a stereoscope which is a high powered microscope, to try and find a lot of hair fragments. They were so small and dark brown, and you could not see them with the naked eye.

Q. Were you able to make a determination, or are you able to make a determination how these

Menges - Direct

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particular hair fragments were severed from the shaft?

A. I examined these hairs individually, all 41, and I made an observation as to whether they were cut by scissors, or cut by a razor cut, or whether they were cut with clippers. You can usually tell sometimes how a hair has been cut, and those hairs with the exception of two were rootless, and I have notes describing what I believe to have been how they were cut since both ends of these small hairs were cut in a certain fashion.

Q. Were you submitted microscopic hair standards of Drew Whitley?

A. Yes. They consisted of Exhibits 36, 49, 50, and 51, and they were facial hair from Drew Whitley from various parts of his face and neck.

Q. Did you attempt to make a microscopic comparison between the microscopic standards you know were submitted from Drew Whitley and these fragments of hair?

A. Yes, I did.

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Q. What were your findings?

A. Because they were so small, they had very little in characteristics. Except for the two that had no roots, all of them had no tips on them, so they had very limited characteristics, what characteristics were there. I was able to compare them actually with a comparison microscope which is two microscopes housed together in a singular ocular, so you can look at what is on the slide of one microscope, and flip a switch, and there it is on the other microscope, and take a look at the two simultaneously. In examining these questioned hairs and the facial hairs of Drew Whitley, I concluded there were many, many overlapping characteristics and similarities.

Q. When you say "overlapping characteristics and similarities," what characteristics and similarities are you referring to?

MR. THOMASSEY: Objection. Unless she can say they match, it is irrelevant.

THE COURT: See you at side bar.

1 Menges - Direct

2 - - -

3 (Side bar proceedings as follows:)

4 MR. THOMASSEY: Exactly my
5 objection.

6 THE COURT: She can say there
7 were similarities, overlapping, and I
8 guess you can clarify what you mean, and
9 you are going to ask the ultimate
10 question, "You can't say they match?"
11 That is the question.

12 (End of side bar proceedings.)

13 Q. Would you tell the jury what you mean when you
14 say overlapping characteristics.

15 A. When we look at questioned hairs and compare
16 them with standards of a known individual,
17 we can say that the hairs have the same
18 or similar microscopic characteristics, they
19 have different microscopic characteristics,
20 or there are characteristics which just aren't
21 present so you can't come to a determination.
22 Because these hair fragments were so small,
23 I could not make the statement that they were
24 microscopically consistent, but I did see
25 so many overlapping characteristics within

Menges - Direct

- - -

the questioned hairs and the standard hairs that I want to make some kind of statement as to their similarities.

Q. They were similar?

A. Yes.

Q. Those hair fragments in the stocking were similar in appearance to the hair you were supplied as being from Drew Whitley?

A. Yes. What was present of these questioned hairs had very similar consistent microscopic characteristics of the known standards of the facial hairs of Drew Whitley.

Q. Were certain fibers also found?

A. You are talking about Exhibit Number 4?

Q. No. Exhibit Number 9, page 5.

A. Yes. There was fibers found on the stocking, and I tried to compare them to fibers found on Exhibit Number 33, but they were different.

Q. I'm going to ask you to jump now to Laboratory Case Exhibit 14 and ask you if you would identify this object, Commonwealth's Exhibit Number 2.

A. It has my evidence tag on it as my Exhibit 14

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I looked at September 6, 1988, and it has my initials.

Q. Did you examine this hat?

A. Yes, I did.

Q. And what were your findings?

A. I found nine hairs that I collected from this hat. One of these hairs was a 2 and 3/4 inch light brown head hair which exhibited Caucasian characteristics and the same microscopic characteristics as the head standards of [REDACTED]. Two of the hairs were animal origin. One other hair was a fine brown hair which I did not examine. The five remaining hairs were very small hair fragments, and they exhibited Negroid characteristics.

Q. At this point, may I ask you, you say you found a hair, light brown, 2 and 3/4 inches the same as [REDACTED]?

A. It had the same microscopic characteristics of the head standards of [REDACTED].

Q. You were submitted head standards from [REDACTED]

[REDACTED]?

Menges - Direct

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1 A. [REDACTED], yes, I was.

2 Q. How can you make the judgment it has the same
3 microscopic characteristics, that is what you
4 are saying, as the hair fragments in Exhibit 9?

5 A. I was saying that the head hair that I found,
6 the questioned head hair, was 2 and 3/4 inches
7 long. This was long hair, and it had a lot
8 of microscopic characteristics that I compared
9 to the head hair standards of [REDACTED],
10 and it had a root, and it had a lot of
11 characteristics, and it had the same
12 microscopic characteristics of [REDACTED].

13 Q. The hair fragments that you found, how long
14 were they? What were their measurements?

15 A. Longest was just over 3 millimeters long,
16 probably less than an eighth of an inch long.

17 Q. Were you able to make a notation how these
18 were severed from the shaft?

19 A. I did. I have a notation on each of these
20 hairs it appeared they were cut with a pair
21 of scissors, or razor, and one appeared it
22 could have been cut with a pair of clippers.

23 Q. Did you examine these hair fragments found
24
25

Menges - Direct

- - -

in the hat with the standards submitted to you as being from Drew Whitley?

A. Yes, I did. I examined each one of these questioned hairs and compared them with the facial hair standards of Drew Whitley.

Q. What were your findings?

A. They were very similar.

Q. Were you able to compare the fragments of hair found in the stocking mask which I previously questioned you on and the hairs in the hat?

A. Yes, I compared them within themselves for their overall characteristics, and they were well within the range of each other.

Q. Were you given a blood sample from Drew Whitley?

A. Yes, I was.

Q. Item 42, Exhibit 42, Page 13 of your report, what were your findings as to Drew Whitley's blood type?

A. The whole blood of Drew Whitley was blood grouping found to be Type O.

Q. Page 15, Exhibit 44, were you submitted a

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tube of whole blood from [REDACTED]?

A. Yes.

Q. Did you conduct blood typing standards on that?

A. Yes, I did.

Q. What type blood was found?

A. I found the whole blood of [REDACTED]
ABO type A.

Q. I'm going to show you what I have had marked for your reference. It is Exhibit Number 13 in your report, page 5. I show you what I have already marked as Commonwealth's Exhibit Number 20 and ask you to examine it, and ask you to identify it.

A. Yes. Again my evidence tag is on here that I looked at this September 12, 1988, my Exhibit 13, and my initials on the evidence tag.

Q. Did you examine that coat?

A. Yes.

Q. What were your findings?

A. Numerous blood stains in a very unusual pattern.

Q. Show the jury what you are referring to.

Menges - Direct

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3 A. See, those are very unusual blood stain
4 patterns here. See, kind of like a circular
5 pattern with blood spatters coming out. They
6 seem to be on various parts of this coat, and
7 I was examining some of these blood stains
8 to find if they were blood of human origin,
9 and the blood group was found to be Type A.

10 Q. Which group, ma'am?

11 A. Type A.

12 Q. Blood spatters for my edification, the ones
13 here?

14 A. Yes. There were other ones over here. They
15 are a little bit faded.

16 Q. Speak up so we can hear.

17 A. I was looking for some other ones because I
18 have photographs of this in my book, and there
19 were other patterns within the coat, circular
20 patterns of blood stains.

21 Q. Were they type A?

22 A. Yes.

23 Q. How many other exhibits were you asked to
24 examine concerning blood type?

25 A. There were numerous exhibits that I examined.

Menges - Direct

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Particularly what I can recall most of all were numerous blue jeans, blue denim trousers, I was examining because it seemed that every one of them had blood stains on them, but I also examined athletic shoes for blood stains.

Q. I'm going to ask you to take a look at your page number 10, Item Number 31, and refer you to Defense Exhibit A, and ask you if you can identify it.

A. Yes. It is a Brooks Athletic Shoe, and I have my case number and exhibit number, initials, and the date September 2, 1988, that I examined this athletic shoe.

Q. What were your findings?

A. I found a blood stain of human origin on the back heel of this athletic shoe. The blood group was found to be Type O. I saw three upside down teardrop stains that were here, here, and here on this shoe, 1, 2, 3, and they actually looked like just fine dusty, dusted with earth, upside down teardrop stains which gives the directionality of being a 90 degree angle from the sole of the shoe

Menges - Direct

- - -

because of the teardropping upside down.

Q. Telling us about the droplets hit the shoe?

A. Yes.

Q. Which direction would they have come?

A. From someplace up above in a downward direction which was upside down which is the directionality of it coming down. When I looked at those three unusual long stains, I saw they were brown and kind of dusty. Underneath each one of the dusty areas were reddish stains that were found to be blood of human origin, and I further blood grouped that and found it to be Type A blood.

Q. Type A blood?

A. Yes.

Q. The dust on the -- are those large blood samples for a shoe?

A. No. They are very small, very small for being blood stains.

Q. And you say they were dust covered?

A. Yes.

Q. What is the significance of that?

A. It appears to me that when the dusty earth was

Menges - Direct

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deposited on these three stains, the three stains had to be wet or the dust wouldn't adhere to them in the same shape as the blood stain, so it would appear to me that, you know, subsequent to the blood stains being deposited on the side of that shoe in a downward direction, there was a fine spray of dusty earth somehow deposited on the outside of those stains.

Q. Were you able to do any kind of tests to determine where that kind of dust came from?

A. First of all, the stains were very minute. They were very small. They were maybe at the longest three millimeters in length, which again is maybe just over an eighth of an inch, and I was more concerned with getting the blood underneath, being able to do something with it more than it looked of human origin, so I had to be concerned about was underneath the earth that was deposited on top of it. If I was just concerned about the dusty earth alone, and not the blood stains, I don't believe there still would

Menges - Direct

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have been enough earth to do any kind of a comparison. They were very small, very minute stains.

Q. Anything special about the kind of earth that encrusted them?

A. It seemed like they were dusty, very powdery, as opposed to being mud.

MR. RADOYCIS: If I may have a moment, Judge.

Q. Page 11, Item 33, what was that?

A. They were a pair of Adidas white and beige athletic shoes that were laceless.

Q. Any findings on those shoes?

A. They appeared like they were recently laundered, but there was a small reddish-brown stain on the top surface of the tongue of the left shoe where it is unattached, closer to where your leg is. I found that to be blood of human origin, and I blood grouped that stain and found it to be consistent with Type O blood.

Q. Item Number 45, page 15?

A. Item 45 is a pair of Pencor blue denim trousers, and I found small reddish-brown stains on the

Menges - Direct

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bottom of the back of the right leg, and I determined that was blood of human origin, and I did blood grouping studies and found the presence of Type H antigens consistent with Type O blood.

Q. Was there a source of the exhibit?

A. Yes. They were to have been on the floor of the master bedroom of 19L Midway Drive, West Mifflin, August 30, 1988.

Q. Item 46?

A. Item 46 consists of a pair of Calvin Klein blue denim trousers. They were collected from the floor of the master bedroom at 19L Midway Drive, West Mifflin, August 30. Reddish-brown stains were observed on the front and back of those trousers, and I further examined one in the knee area of each leg, and one stain at the bottom of the back of the left leg, and they were found to be blood of human origin, and blood group studies on the front of the right and back of the left leg I found my results to be consistent with Type O blood.

Q. Item 47?

Menges - Direct

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3 A. Forty-seven consists of a pair of Sheridan
4 blue denim trousers collected in the master
5 bedroom laying on a chair at 19L Midway
6 Drive. There were four stains in the front
7 of these trousers, and they were examined
8 for blood and found blood of human origin.
9 I blood grouped the stains on the knee area
10 of the left leg, and I found the results to
11 be consistent with Type O blood.

12 Q. Item 48?

13 A. Item 48 is a pair of blue jeans folded up
14 on a chair in the master medroom at 19L Midway
15 Drive, West Mifflin, collected August 30, 1988,
16 and consisted of a pair of Braxton blue denim
17 trousers. Reddish-brown stains were observed
18 on the front and back of these denim trousers.
19 I found they were blood of human origin; and
20 two stains, one on the bottom of the back
21 of the right leg and found it to be consistent
22 with Type O blood. I couldn't get any
23 conclusive results on blood grouping studies
24 from the stain in the knee area of the left
25 leg. Part of this exhibit was that of Braxton

Menges - Direct

- - -

blue denim trousers with blood stains in the front and back of these trousers. I examined some of the stains on the front of the trousers and found them to be blood of human origin. I blood grouped a stain on the upper leg and knee area of the left leg which again resulted consistent with Type O blood. The stain I attempted on the lower right leg, I could not get any conclusive results. The third item in this exhibit was a pair of Madman blue denim trousers, and again I found reddish-brown stains to be blood of human origin on the front and back of this item. I performed blood grouping studies on a stain on the knee area of the left leg and found it to be consistent with Type O blood. I believe that was all.

MR. RADOYCIS: Nothing further of this witness at this time.

THE COURT: Cross-examine.

- - -

CROSS-EXAMINATION

BY MR. THOMASSEY:

Q. Mrs. Menges, you are a professional evidence examiner, isn't that correct?

A. Yes.

Q. And you work at the County Crime Laboratory along with Dr. Levine who this jury has heard from, isn't that correct?

A. Yes.

Q. And your job is to examine evidence and to see where it leads, isn't that right?

A. See what I can discover from the evidence as far as information, yes.

Q. And you do certain tests to determine, for example, blood types, hair follicle samples. There's many, many tests which you can perform to eliminate suspects or to include suspects, isn't that correct?

A. Yes, that is correct.

Q. And you have told the jury here that [REDACTED] was a Type A blood, isn't that right?

A. Yes.

Q. Drew Whitley is a Type O?

A. Yes.

Q. You would agree with me, wouldn't you, everybody

Menges - Cross

- - -

in the world is one of four blood types?

A. I don't think everybody is. I think there's a Bombay tentatype, and there's an exceptionally rare one found in Africa, so almost everybody in the world is one of four major blood types.

Q. All of us is an A, a B, a AB, or an O, isn't that right?

A. Yes.

Q. In the general sense, except for that one very rare blood type, everybody in this room is one of those?

A. Yes.

Q. Are there very many forensic types of tests that you can do to further reduce the blood type down to somebody individually?

A. Yes.

Q. We call those antigens. Those are what we examine, correct?

A. AB types, there are antigens, also enzymes that are in blood. They can break down the blood as to its source even more.

Q. You are familiar with the MNS system?

A. Yes.

Menges - Cross

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1 Q. Explain to the jury what that is.

2
3 A. There are antigens also found in blood,
4
5 but we do not do that in our laboratory
6
7 because there are problems with dry blood
8
9 stains. The chemistry of dry blood stains,
10
11 as opposed to whole blood, done in blood
12
13 testing is very different. Sometimes the
14
15 negative controls or the positive controls don't
16
17 work on these types of testings, so we don't
18
19 do these as a rule in our laboratory. I don't
20
21 know too many laboratories that do really do
22
23 this at this time.

24 Q. You didn't do it in this case. You didn't
25
26 know if it would work?

27 A. With the amount of blood stains I had to deal
28
29 with on certain exhibits that came up Type A,
30
31 as opposed to Type O, were so limited, I was
32
33 very fortunate I felt to even get ABO type,
34
35 let alone any other examinations.

36 Q. Mrs. Menges, you could have had plenty of
37
38 [REDACTED] blood if you wanted it.

39 A. Yes, but I had nothing to compare it to, and
40
41 we do not waste our time on laboratory testing

Menges - Cross

- - -

of whole blood of an individual all the way down to its finite contents if we have nothing to compare it to.

Q. Well, you have something to compare it to because you told the jury that [REDACTED] was A, and the blood you took off this shoe was an A.

A. Yes.

Q. So that is what we want to talk about. So you did have something to compare it to, correct?

A. Yes.

Q. And you had plenty of [REDACTED] blood.

A. Yes, but I did not have plenty of questioned blood stains.

Q. You did your examination of that shoe when?

A. On August 26, 1988.

Q. August 26, within a week of the murder?

A. Yes.

Q. Now you could have broken down [REDACTED] blood to get down to the more scientific base using the other antigens, Rh factor, the MNS system, the HL-A system, all of those

Menges - Cross

- - -

factors you will have. They are pointers sort of like in our blood that will further distinguish one person's particular blood, isn't that right? You can do that because you have plenty of [REDACTED] blood, and at least we would know what the factors are in her blood that we want to be looking for when we get another factor -- I'm sorry -- when we get another sample, isn't that correct?

A. It is a procedure in our laboratory, and most laboratories that you look at the questioned stains and you know how far you can go with it. If you can't go any further than the ABO, then it is pointless to take the whole blood of an individual and further break it down. It doesn't give you further information because there's nothing to compare it to.

Q. If you get another suspect and you have broken down the blood, you would have a better indication because you would have more factors to look at to get a better match if you had gone and done the blood group studies that

Menges - Cross

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I have talked about, isn't that correct?

A. That is no problem in our laboratory because when we get a whole blood sample in, what we do, we make a dry patch of it, we make a dry patch of the serum, we make a dry patch of the red cells, and also a dry patch of the whole blood that is spun down, and we take this blood and carefully label it, put it in a manilla envelope and subsequently put it in plastic ones so it is totally air tight and freeze it, and that blood is on record for years and years, and we have taken cases out of our files that have been five years old and had to do further comparisons on it, so I have [REDACTED] blood on a dry patch, and any time I would find another sample that I could compare it to, I have an infinite amount to do all that testing.

Q. You said you couldn't do it on dry blood?

A. No. I said the ones you are referring to, MS and MNS, you are referring to, as far as our system would go as far as the DNA, I have plenty of samples left to do that and compare

Menges - Cross

- - -

them.

Q. You didn't do the HL-A testing and MNS testing on the dry blood. You didn't. That is my question.

A. No. When I was referring before to the controls you were talking about the MN and the S, and you weren't referring to the HL-A. I made no statement about the HL-A.

Q. What percentage of black and white people in the world with A blood?

A. Probably around 40%.

Q. So almost half of the people out there have A blood. Forty per cent.

A. Caucasian you are referring to?

Q. Caucasians have A blood. I'm simply saying somebody's blood is A, and without doing any further testing, all I can tell you, this person is one of almost half of the people in the world that has A blood.

A. That is almost half of the people in the world that have A blood. It is consistent of all of the people in the world have type A blood.

Q. And 40% of those people have it?

Menges - Cross

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1
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3 A. Approximately.

4 Q. Now you would agree, wouldn't you, that just
5 types A and O is the broadest, the broadest
6 label, so to speak, that you can put on some
7 blood?

8 A. Yes.

9 Q. It would be like you have a Chevrolet here,
10 and you have a Chevrolet there, because that
11 is a blood type.

12 A. But they are different.

13 Q. They are different, but if you want to make
14 them really different, you do one of these other
15 tests, the MNS system, and then you can do
16 the HL-A system, so then you start with two
17 Chevrolets, then you can say one is a Nova
18 and the other one after you do the MNS test,
19 you can say this was a stationwagon.

20 A. I have already testified I submitted them to
21 the ABO system.

22 Q. That is a broad 50% of O and 40% of A.

23 A. Fifty per cent in the world have MN as opposed
24 to MNS.

25 Q. The question is you didn't do that.

Menges - Cross

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2
3 A. That was not done. We did not do that with
4 dry blood stains.

5 Q. Did you figure up the Rh factor?

6 A. No. The Rh on dry blood is not performed
7 because the negative and positive controls
8 do not work in a long range test.

9 Q. Did you do that on [REDACTED] blood?

10 A. I'm not concerned what her Rh system is.

11 Q. You don't know if she is A positive or A
12 negative?

13 A. No.

14 Q. Have you been made aware that Mr. Whitley
15 was tested by the police and his blood is
16 A positive?

17 A. No. I know nothing except the evidence I have
18 examined. I know nothing other than the
19 individuals that I received their blood from.

20 Q. If those were found in Drew Whitley's home
21 where his son is, that could be A positive or
22 A negative. It is just A.

23 A. The stains are A, and this stain is an O.

24 Q. One of those stains on there possibly is
25 Mr. Whitley's because it is an O. You said

Menges - Cross

- - -

her blood was A. And the other stain on there according to the District Attorney must be Miss [REDACTED] blood, or could be Drew Whitley's son's blood. We don't know.

A. I don't know what Drew Whitley's son's blood is.

Q. It is A positive. The police had it done. When you talked about blood and you talked about the direction you examined many times blood spatterings, there's all kinds of patterns that blood makes when it is deposited somewhere, isn't that right?

A. Yes.

Q. Many times you might examine a piece of evidence in a case, and if it is a drip, that indicates that the blood, for lack of a better word, dripped down and it makes I think what you described a sort of a pearl type --

A. Teardrop.

Q. -- pattern which indicates a slow dripping type blood which indicates perhaps no movement, and the blood is sort of dripping, right?

Menges - Cross

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3 A. I don't know the velocity the blood had when
4 it drips.

5 Q. The direction -- I mean it sort of like drips.

6 A. When it hits at a high velocity, it will also
7 make a tear drop pattern.

8 Q. Talking about high velocity, we would call that
9 a blood splatter?

10 A. This also would be considered a spatter.

11 Q. Which is it, a drip or a spatter?

12 A. I would say that blood was deposited spattered
13 in a downward motion onto that shoe.

14 Q. Why didn't you say that when the District
15 Attorney said was it a tear drop?

16 A. I said it was deposited in a downward direction.
17 I don't recall saying how, but I don't
18 recall saying dropped or spattered. I just said
19 it was deposited in a downward direction.

20 Q. Mrs. Menges, none of the hairs in this case
21 matched my client, did they?

22 A. I don't know what you define as "matching."

23 Q. When you testify, you will come into court
24 and you will say you have a hair from here
25 found at the scene of the crime, and you have

Menges - Cross

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one of mine found here, and they took it from me, and they are trying to place me at the scene. Normally you will say, "I examined the hair that we found at the scene and the hair we took from Mr. Thomassey. I examined them and I found them to be microscopically consistent." That is what you say, isn't it, in the normal case when you are matching hairs?

Q. When comparing hairs, I say they are microscopically consistent, and they are different, but that is different than saying "matched."

Q. Your term, the most positive you can get is "microscopically consistent"?

A. That is correct.

Q. That is not what you said in this case. You say they overlap.

A. I say there are very many overlapping characteristics due to the lack of characteristics in such small hairs. That is all I would like to say about them.

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2 BY THE COURT:

3 Q. Can you say whether or not they are consistent?

4 A. I have no reason to believe that those
5 questioned hairs I examined and compared to
6 the facial hairs of Drew Whitley, I have no
7 reason to believe these hairs could not have
8 come from Drew Whitley.

9 Q. That is not the answer.

10 MR. THOMASSEY: That is not the
11 question.

12 THE COURT: That is what my
13 question -- in response to my question.
14 I will rephrase the question.

15 Q. Can you say whether or not the samples of
16 hairs you analyzed, the ones you analyzed
17 from the stocking cap and the samples from the
18 defendant, Mr. Drew Whitley, can you say those
19 two samples that you analyzed, are they
20 consistent? Can you say whether or not they
21 are consistent?

22 A. I believe they have many, many consistencies
23 microscopically.

24 Q. That is not an answer to the question. I
25 understand what your explanation is.

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A. All I can say, they are not inconsistent.

Q. Can you say they are consistent?

A. I found no inconsistencies. Based on what I am basing my comparing on, yes, they are consistent.

Q. You are saying they are consistent?

A. I found no inconsistencies in the hairs, and if there's no inconsistencies based on what I am seeing of the hairs, there is a consistency.

Q. You are saying they are consistent?

A. Yes.

BY MR. THOMASSEY:

Q. On direct examination you said, and I wrote it down, these hairs were not microscopically consistent.

A. I wouldn't go that far to say they were microscopically consistent. In a normal approach when you have whole rooted and tipped hairs, and I explained that as far as the amount of hairs present, and the amount of each hair present, that there were so many microscopic characteristics that were similar and some overlapping characteristics that were

Menges - Cross

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similar to the facial hair standards of
Drew Whitley.

Q. You had two hairs from the mask that had a
root on it.

A. Yes.

Q. How much bigger of a hair can you get?

A. Well, have you ever seen a tiny hair that has
a root and tip and still can be two millimeters
long? That is a small hair.

Q. That is what you work with mainly, you always
work with a microscope and minute particles.

A. Yes. We are working for head hair standards,
and most cases pubic hair characteristics.
Those hairs appeared to be beard style.

Q. That is how he was in August. The police came
the day after the murder and took some of his
hair samples.

A. I think they shaved some of his hair samples.

Q. They went over and took some and --

A. I asked if he had facial hair standards to
compare them to.

Q. Now two of the hairs from the mask had roots
on them, right?

Menges - Cross

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3 A. Yes.

4 Q. You are familiar with deoxyribonucleic patch
5 testing, what we call DNA that is like
6 fingerprints?

7 A. Yes.

8 Q. No two people in the world are alike unless
9 they are identical twins?

10 A. That is correct.

11 Q. These people were cell marked, and the DNA
12 tests are so sophisticated they can come
13 into court and say, "I have got some blood
14 of a defendant," and in this case my client
15 because you got a whole lot of it?

16 A. Right.

17 Q. And they could take a minute particle,
18 especially if it has a root on it because
19 that is your flesh and your blood, and they
20 can say things like, "The chances of this hair
21 not coming from this person whose blood I have
22 are some phenomenal number like one in
23 2 billion." That is what they do, isn't that
24 correct?

25 A. Yes.

Menges - Cross

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Q. And in this case, the reason the hair is used to cell mark, along with Drew Whitley's whole blood, and telling the jury what they found, if anything.

A. When it happens to be a rooted hair, it depends on the growth phase of the hair. If it is in the young growth phase, as opposed to old hair about to fall out, there are in some cases, if there's enough tissue present around the root of that hair when it is pulled out from an individual, they can do the DNA analysis and compare it to the whole blood of an individual to the two hairs I referred to which were sent down to cell mark. I believe they were sent down, actually hand-carried down, and there was not enough DNA present to make a comparison.

Q. There wasn't enough DNA present?

A. On those two roots. The hairs, they were very small hairs -- and not enough DNA present on the roots or near the roots on those hairs to make a comparison, but it was attempted.

Q. By the way, there was a hair found on this shoe,

Menges - Cross

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too, wasn't there? It wasn't Noreen Malloy's, was it?

A. You refer to the --

Q. I think 31 or 33.

A. Yes, you are right.

Q. Whose was it?

A. Number 31, no hairs were observed on the left shoe.

Q. One dark brown hair one inch long different from the head hair standards of [REDACTED]. Number 31, bottom of page 10 on the shoes. One dark brown hair one inch long -- excuse me, -- page 10. I thought you were with me.

A. I was referring to the right shoe, and there is a one inch long hair different from the head hair standards of [REDACTED].

Q. That is a human hair?

A. Yes.

Q. You don't have any way of knowing how old or how long a blood stain has been on a shoe?

A. It is really aged, several years old. Sometime over six months of age, it starts to get

Menges - Cross

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brownish, as opposed to reddish brown, but to my knowledge, there's no way to age a blood stain except to say by experience it appears to be aged, perhaps over six months to a year.

Q. You don't have any opinion on this one?

A. To me they looked like reddish-brown stains and were not what I have considered over the years to be aged, that they weren't over six months to a year old.

Q. How about the old stain?

A. They all appear to be relatively in the same time frame.

Q. Same age. So if it got on there, it got on there about the same time?

A. Could have been.

Q. You were never given any gloves to examine, were you, in this case?

A. I can't recall.

Q. I don't think you were. You don't have to look. This hat that you examined, where is it? How big around was this hat?

A. Inside of the hat, and I measured circumference.

Menges - Cross

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Q. That is inside, the distance around?

A. I would assume it would be most likely to fit on a person's head, and I found that the circumference of the inside of the hat measuring the center line of the inner hat being 22 and an eighth inches.

Q. What is the circumference of Drew Whitley's head? Twenty-two and an eighth is the hat, and the hat would go over the head, right? What is the circumference of his head?

A. I was submitted Exhibit 52 as a white envelope, and it was labeled one string, circumference of the head of Drew Whitley, September 12, 1988, and it held one string and it measured 23 and a quarter inches in length.

Q. His head is 23 and a quarter inches around, and the hat is what?

A. I believe that is 22 and an eighth.

Q. Twenty-two and an eighth. So his head is bigger than the hat significantly. An inch and a half, an inch?

A. Yes. An inch -- an inch and a quarter -- an inch and an eighth.

Menges - Cross

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Q. You got some cigarette -- I'm sorry, terrible language -- you received some cigarette butts to examine also, Mrs. Menges?

A. Yes.

Q. What is the purpose of those? They are Newports, right?

A. Yes, they had the Newport logo as part of the logo.

THE COURT: Why don't we break at this point.

MR. THOMASSEY: For lunch?

THE COURT: Yes. All right, members of the jury, we are going to take our recess for lunch. I want to caution you again at this point you cannot discuss this case with anyone, your friends, your family, even your fellow members of your jury panel until such time as you have heard all of the evidence in the case, the final arguments of counsel, and the charge of the law you must apply to this case. You are not to read any

1
2 newspaper accounts, or listen to any
3 radio or TV accounts concerning this
4 case or any parties involved in this
5 particular case. That being the case,
6 we are going to recess for lunch.
7 Hopefully you all have a pleasant lunch,
8 and see you back here at 1:30.

9
10 AFTERNOON SESSION

11 THE COURT: Mrs. Menges.

12
13 CROSS-EXAMINATION (Continued)

14 BY MR. THOMASSEY:

15 Q. Mrs. Menges, you received, did you not, marked
16 as Exhibits Number 4 and Number 5 on page 4
17 of your Laboratory Report, some cigarette butts,
18 is that correct?

19 A. Yes.

20 Q. Were you asked to examine those?

21 A. Yes, I was.

22 Q. And what is the purpose of examining cigarette
23 butts?

24 A. First of all, when you get cigarette butts,
25 we try to identify what they are, and after

Menges - Cross

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we establish what kind they could be or what kind they are, we examine the lip trace antibodies which is the chief ingredient for saliva for our identification purposes. Approximately 80% of the world are secretors, and they secrete the mouth substances into the physiological fluids, saliva and vaginal secretions. After we establish the fact there is amylase present on the cigarette lip, and then we try and establish the fact what group substances are present to see in a secretor of a cigarette and what type of properties it might have.

Q. In other words, if a secretor smokes a cigarette butt -- smokes a cigarette and leaves a butt, you would presume some of his saliva would be detected upon that, and when you find it and you examine it, and when you examine it, you look for amylase, and then that is one of the indicators you can use to perform further tests to determine the blood type of the person who smoked that cigarette, is that correct?

Menges - Cross

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3 A. I said a secretor or non-secretor could deposit
4 saliva. Sometimes they do, sometimes they
5 don't on a cigarette butt wrapper.

6 Q. Only a secretor would deposit amylase, is that
7 correct?

8 A. No, sir. Anybody that would deposit saliva
9 onto anything, we look for amylase. You
10 don't have to establish a secretor to deposit
11 saliva. You could be a non-secretor to deposit
12 saliva, and when your saliva is present and
13 you are a secretor, establish the blood group
14 presence in that saliva.

15 Q. Drew Whitley is a secretor?

16 A. Yes.

17 Q. Type O secretor?

18 A. Type A secretor, yes, sir, common with Type O
19 blood.

20 Q. You were given cigarette butts of Newport
21 Cigarettes found in the stairwell at McDonald's?

22 A. Yes.

23 Q. Did you examine them?

24 A. Yes.

25 Q. Did you detect anything on them?

Menges - Cross

- - -

A. I did not find any amylase present on either the lip wraps of either Exhibits 4 or 5. Therefore, I did not test them for blood group substances.

Q. Similarly, if somebody were to have a stocking mask over his face, including his mouth, would you expect in examining that stocking mask to find saliva?

A. Not necessarily. Because in examining a lot of cigarettes and a lot of other garments, I wouldn't expect to find saliva on all items. A person, just because they smoke a cigarette or they are wearing something over their mouth doesn't necessarily salivate over those items, so you don't necessarily have to find saliva.

Q. You looked for it in this case, didn't you?

A. Yes.

Q. And had you found saliva, once again you would have looked for the deposit of amylase which once again then could be referred back to the defendant or anybody else, isn't that correct?

A. If there's amylase present that suggested there's saliva present, and from there I would do the

Menges - Cross

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blood grouping study to see if there were any blood group substances present.

Q. You couldn't do that in this case. There was no saliva whatsoever?

A. I didn't detect any.

Q. Did you find that to be unusual?

A. No.

Q. You mean if I put a stocking mask over my face and kept it on there -- nobody knows how hot it was last June -- or August -- you mean -- and let's say I have it on just for 10 or 15 minutes, and I am talking to people through it, perhaps running, you don't believe in your experience as a criminalist there would be some saliva deposited on this stocking at or about the place where it was in contact with my lips and my mouth?

A. I find myself in summertime I become very dry, so I would not, and I think it is not fair to say because somebody wore something like that over their face that would cause the saliva should or should not be present.

Q. I am asking you in your experience, most of the

Menges - Cross

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time you get a mask or something somebody uses in a robbery, and he had it on for a while and was talking especially, you would expect to detect some kind of saliva, wouldn't you?

A. I can't recall any specific instances. I'm sure there are certain cases where I perhaps have found it when I was looking at the stocking very carefully under the stereomicroscope, I saw a lot of skin cells and so forth, and I did not see anything that suggested saliva.

BY THE COURT:

Q. The question is have you ever examined stocking masks before?

A. Yes.

Q. Have you ever found saliva on stocking masks?

A. Yes. I believe I have in certain cases, but not in all cases.

Q. Approximately how many stocking masks have you analyzed?

A. That, I wouldn't know. I keep a record of how many cases I do, but I don't have a record

Menges - Cross

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of how many stocking masks I have examined.

THE COURT: Go ahead.

BY MR. THOMASSEY:

Q. You can't say any hair submitted to you in this case besides the standards of Drew Whitley you received came from him?

A. That is correct.

Q. You examined this coat, isn't that right?

A. Yes.

Q. What size is it?

A. I don't recall. I believe it is an 8 or 10. I can't recall. I didn't commit that to memory. I have here Utex size 11/12 in my report.

Q. It is a woman's coat?

A. It appears to be.

Q. Is that a junior coat, or would that be a regular ladies' coat, or misses' coat?

A. I'm not sure because I wear a size 10, but it is not in the junior department, so I don't know what the junior sizes are.

MR. THOMASSEY: That's all,

Your Honor. Thank you.

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MR. RADOYCIS: Nothing further,
a.

BY THE COURT:

Q. You can't say that the hair samples that were found in the stocking mask belonged to the defendant?

A. I cannot say through microscopic examination every hair.

Q. You can't say every hair belonged to a certain individual? You can't say it belongs to the defendant?

A. That is correct.

Q. The hair samples found in the stocking mask that you classified as being Negroid, is that correct?

A. Yes.

Q. And there's testimony that -- well, can you limit the number of people whom these samples could be associated with?

A. They were also very similar to each other in the nature of the way they were cut, the way the colors were consistent among themselves, the diameter, pigment distribution, the type of

1
2 surface that the hairs had, I would believe
3 they would come from one individual.

4 Q. Pardon me?

5 A. It was my opinion they would have come from
6 one individual.

7 THE COURT: That's all I have.

8 Anything further?

9 MR. THOMASSEY: No, thank you.

10 MR. RADOYCIS: Nothing, Judge.

11 THE COURT: You may step down.

12
13 CHUCK HODOWANEC,

14 having been duly sworn, testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. RADOYCIS:

18 Q. State your name and spell your last name.

19 A. Chuck Hodowanec, H-o-d-o-w-a-n-e-c.

20 Q. Mr. Hodowanec, how old are you?

21 A. Forty-three.

22 Q. May I ask you do you know an individual by the
23 name of Drew Whitley?

24 A. Yes, I do.

25 Q. Is Mr. Whitley in Court?