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TWENTY-SECOND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY
STATE OF LOUISIANA

STATE OF LOUISIANA

NO. 128,634

VERSUS

JURY TRIAL

DENNIS P. BROWN

* * * * *

VOLUME II

TRANSCRIPT OF PROCEEDINGS taken before
the Honorable John W. Greene, Judge
Presiding, Division "D", Twenty-Second Judicial
District Court, Parish of St. Tammany, State
of Louisiana, and a Jury, on Thursday, September
12, 1985, in Covington, Louisiana.

APPEARANCES:

JACK E. HOFFSTADT, ESQ.
JOSEPH B. TOSTERUD, ESQ.
(Assistant District Attorneys)

THOMAS E. FOLEY, ESQ.
MS. ELLEN EVANS
(Attorneys for Defendant)

REPORTED BY:

Edgar W. Assmann, R.P.R., C.S.P.
Deputy Official Court Reporter

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JASON FONTENOT - JERRY MILLER

1 Q. Do you recall when you did this test,
2 the date and time?

3 A. The date?

4 Q. Yes.

5 A. It was 10-31-84, and it was done in the
6 morning, about ten o'clock in the
7 morning.

8 BY MS. EVANS: No further questions.

9 BY THE COURT: Redirect?

10 BY MR. TOSTERUD: No. I'd ask that he
11 be excused from his subpoena.

12 BY THE COURT: You may step down.

13 You're excused from your subpoena.

14 BY MR. TOSTERUD: Call Jerry Miller.

15 (JERRY MILLER, AFTER HAVING BEEN FIRST
16 DULY SWORN UNDER OATH, DID TESTIFY AS FOLLOWS:)

17 DIRECT EXAMINATION BY MR. TOSTERUD:

18 Q. Would you state your name and
19 occupation for the record, sir.

20 A. Jerry Miller. I'm a forensic scientist
21 for the Louisiana State Police
22 Crime Lab.

23 Q. And for how long a period of time have
24 you been employed by the Crime Lab,
25 sir?

26 A. Almost eight and a half years.

27 BY MR. TOSTERUD: Your Honor, at this

JERRY MILLER

1 time I would attempt to qualify Mr.
2 Miller as an expert in serology.

3 EXAMINATION BY MR. TOSTERUD:

4 Q. What is your formal educational
5 background, sir?

6 A. I have a BS Degree in zoology from
7 Southeastern Louisiana University.
8 I attended Southeastern Louisiana
9 for a course in zoology. I
10 attended a course in Quantico,
11 Virginia, for hair and fibers
12 identification. I give lectures at
13 LSU in the field of serology. I
14 also worked in Assumption General
15 Hospital in their blood bank as a
16 lab technician. And I belong to
17 the Louisiana Association of
18 Forensic Scientists.

19 Q. Have you received any on-the-job
20 training at the Louisiana State
21 Crime Lab in this field sir?

22 A. Yes, six months on-the-job training.

23 Q. Do you read the current publications in
24 this field?

25 A. Yes, I do.

26 Q. Do you have any other duties at the
27 Crime Lab?

JERRY MILLER

1 A. Presently I'm working in the narcotics
2 section.

3 Q. Have you ever been qualified before as
4 an expert in the field of serology,
5 sir?

6 A. Yes, I have, many times.

7 Q. In what jurisdictions?

8 A. I've testified here, St. Tammany,
9 Tangipahoa, East Feliciana, West
10 Feliciana, East Baton Rouge, West
11 Baton Rouge, and many others.

12 Q. Have you ever been refused
13 qualifications, sir?

14 A. No, I haven't.

15 BY MR. TOSTERUD: I'd tender, Your
16 Honor.

17 CROSS-EXAMINATION BY MS. EVANS:

18 Q. One quick question. Mr. Miller, are
19 you a full-time faculty member of
20 any universities?

21 A. No. I just give lectures about once
22 every six months.

23 BY THE COURT: Is that it?

24 BY MR. TOSTERUD: I'd submit the
25 matter.

26 BY THE COURT: Yes. The Court will
27 accept Mr. Miller as an expert in

JERRY MILLER

1 the field of serology.

2 FURTHER DIRECT EXAMINATION BY MR. TOSTERUD:

3 Q. Would you explain to the jury the
4 nature of the work you do, namely
5 blood analysis and blood typings?

6 A. I'm basically a serologist, which is I
7 do the examination of bloodstains
8 and other body fluids such as
9 seminal fluid and saliva and also
10 the stains they leave on clothing
11 and other items.

12 Q. Did you have occasion to examine and
13 type the blood of the defendant in
14 this matter?

15 A. Yes, I did.

16 Q. What type blood did you learn that the
17 blood of the defendant, Dennis
18 Brown, was?

19 A. Dennis Brown was a Type-O and a
20 secretor.

21 Q. Would you explain to the jury what a
22 secretor is and how you came about
23 making that determination?

24 A. Yes. A secretor is a person who will
25 leave his A-E-O blood type, such as
26 Type-O, in saliva, semen, and other
27 body fluids. A nonsecretor will

JERRY MILLER

1 not leave their blood typings in
2 their body fluid. About eighty
3 percent of the population are
4 secretors.

5 Q. In connection with this case, I'm going
6 to show you what's previously been
7 marked for identification as
8 State's Exhibit-1. It appears to
9 be a pair of lady's underwear and a
10 feminine napkin.

11 A. Yes. I examined this. It has our case
12 number and my initials.

13 Q. And, Mr. Miller, what type of test did
14 you do on those items?

15 A. On these I checked for the presence of
16 seminal fluid or blood. And on the
17 napkin I found seminal fluid and
18 bloodstains, also spermatozoa.
19 Spermatozoa are the male
20 reproduction cells which are in
21 seminal fluid which can only come
22 from a male. I also did typing on
23 these seminal fluid stains, which
24 are mixed with blood, for example,
25 and it came out with Type-O.

26 Q. Would you explain to the jury a little
27 bit about how you were able to get

JERRY MILLER

1 a blood type from this seminal
2 fluid or spermatozoa?

3 A. First of all, I had to determine that
4 seminal stains were present. On
5 this I do what is called an acid
6 phosphatase test. That is a
7 protein present in high
8 concentrations of seminal fluids.
9 Positive test for this is an
10 indication that seminal fluid is
11 present. My next test is to do a
12 microscopic test and check for
13 spermatozoa cells, and both tests
14 were positive. Then I do an
15 absorption inhibition test. This
16 is a test where antibodies are
17 added to the stains to check to see
18 what the A-B-O types of the stains
19 are. And I detected the presence
20 of "H" antigen, and that indicates
21 Type-O. And this is the only
22 antigen which I detected, which
23 indicates that it came from either
24 a Type-O secretor or a nonsecretor.

25 Q. Now, let me show you what has been
26 previously marked for
27 identification purposes as S-2 in

JERRY MILLER

1 globo. Ask if you would look at
2 this envelope and look at the items
3 contained therein and tell me if
4 you did any analysis on those?

5 A. Okay, this would be blood from the rape
6 victim. These are slides that were
7 taken by the doctor. On these
8 slides I did find the spermatozoa.
9 And this would be the pubic hair
10 sample from the victim.

11 Q. I believe there's one more item there.

12 A. And the gauze would be the saliva
13 sample from the victim. It has my
14 case number and initials on it,
15 also.

16 Q. Did you have occasion to analyze that
17 saliva sample?

18 A. Yes, I did.

19 Q. And what were your findings, sir?

20 A. From the blood and saliva samples, I
21 determined that the victim also was
22 a Type-O secretor. This is the
23 saliva sample here.

24 Q. Were you able to make through your
25 analyses any determination if the
26 defendant in this case was a
27 secretor?

JERRY MILLER

1 A. Taking into account the blood type of
2 the victim and also the type of the
3 stains that I found, I determined
4 that the person that left the
5 seminal stains could either be a
6 nonsecretor or a Type-O secretor.
7 A nonsecretor because there was
8 blood on the napkin itself which
9 could have come from the victim,
10 and in a case of intercourse like
11 this, some of the blood type could
12 be coming from secretions from the
13 victim herself since she is a
14 secretor and she is also a Type-O.
15 So the suspect could have either
16 been a nonsecretor or a Type-O
17 secretor, also.

18 Q. Did you receive any information or any
19 items that gave you an opportunity
20 to make an opinion relative to the
21 defendant, Dennis Brown, if he was
22 a secretor or not?

23 A. Yes. I received blood and saliva from
24 him, also.

25 Q. Was he a secretor also in your opinion?

26 A. Yes, he was a Type-O secretor.

27 Q. Now, what did you do with these items,

JERRY MILLER

1 sir, after you completed your test?

2 A. I sealed them up. The red evidence
3 tape there is the tape that I
4 sealed it with and turned it into
5 my evidence technician who locked
6 it in her vault until it was picked
7 up by Roy Spinks.

8 Q. Now, you were not able to make any --
9 no hair similar to that of the
10 defendant was found in the victim's --

11 A. There was no foreign hair found on the
12 panties or the napkin.

13 BY MR. TOSTERUD: Thank you. I tender.

14 FURTHER CROSS-EXAMINATION BY MS. EVANS:

15 Q. Mr. Miller, you've been doing this kind
16 of work a long time, and I gather
17 these tests are pretty
18 sophisticated. But there's no way
19 to prove the fact scientifically
20 through these tests that a rape was
21 committed or not committed, is
22 there, sir?

23 A. I can only prove that intercourse
24 occurred or there was an
25 ejaculation.

26 Q. And you can test for the presence of
27 sperm in the vagina, is that

JERRY MILLER

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correct?

A. That's correct.

Q. There's no test to determine the time at which the stains that you took your tests from were deposited on that clothing, isn't that correct?

A. That's correct.

Q. And the victim in this case, Ms.

[REDACTED], was having her period at the time this rape was supposed to have occurred, isn't that correct?

A. It's my understanding it was the first day of her menstrual cycle.

Q. Now, you're an expert in serology; so if you could, please explain for the jury -- we had a little testimony from another witness on this. If you could, explain within the general population approximately what percentage of people have Type-O blood.

A. According to our charts, approximately forty-five percent are Type-O.

Q. Okay. And approximately how many are Type-A?

A. Type-A is about forty percent, according to my charts.

JERRY MILLER.

1 Q. Okay. And within that Type-A category,
2 approximately what percentage of
3 people are secretors?

4 A. About twenty -- I mean, excuse me,
5 about eighty percent are secretors.

6 Q. And how about Type-B blood?

7 A. In my charts, it's about ten percent.

8 Q. Okay. Mr. Miller, I have a chart here.
9 I'm going to ask you if that would
10 be helpful to explain further to
11 the jury about the breakdown --

12 BY MR. TOSTERUD: May I see this?

13 BY MS. EVANS: Yes, certainly.

14 EXAMINATION BY MS. EVANS:

15 Q. I'll show you a diagram which shows
16 blood typing that I've previously
17 shown you, and ask you if that
18 would be helpful to you in
19 explaining to the jury this blood
20 typing and the secretor-nonsecretor
21 factors?

22 A. Yes, it complies with my figures.

23 Q. Okay. Now, Mr. Miller, you would
24 agree, then, that approximately
25 forty-five percent of the
26 population at large has Type-O
27 blood. Is that correct?

JERRY MILLER

1 A. That's correct.

2 Q. And of --

3 A. I was going to say, my figures vary
4 slightly with the secretor in that
5 it has eighty-five percent there.
6 But that's just a slight variation.

7 Q. And approximately --

8 A. AB is about five percent.

9 Q. Five percent of the population?

10 A. Ten percent of the population is Type-B
11 and forty percent is Type-A.

12 Q. Isn't it also true that even a greater
13 percentage of black people have
14 Type-O blood?

15 A. The charts that I've used do not
16 categorize between --

17 Q. Well, in your experience?

18 A. We have done some percentages on our
19 own, and "O" was slightly higher.
20 Of course we didn't divide it into
21 black and white there either. But
22 our chart is similar to this.

23 Q. In your experience as an expert in
24 serology, isn't it correct to say
25 that more black people have Type-O
26 blood than white people as a
27 general proposition? Isn't that

JERRY MILLER

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correct?

A. I really can't say, because I've never divided it into black and white.

Q. Do you have an opinion?

A. I would say it's possible. I don't think it would vary that much between the forty-five percent.

Q. Do you think more people in the black community have --

A. I know there are more black people that have Type-B than white. But the "O", I really can't say.

Q. Okay. Now, in Type-A blood, what percentage have the secretor factor and what percentage have the nonsecretor factor?

A. The secretor in Type-A-B-O is independent of each other. It's eighty percent of the population are secretors and twenty percent are nonsecretors independent of the A-B-O factor.

Q. But it's constant, is it not, that eighty percent of the population are secretors?

A. That's correct.

Q. So this depiction here of fifteen

JERRY MILLER

1 percent nonsecretors within the
2 Type-A category and this depiction
3 of five percent -- eighty-five
4 percent, excuse me, in the "B"
5 category are secretors, and the
6 same would hold true in the AB
7 category for all AB types?

8 A. That's correct.

9 Q. Eighty-five percent are -- excuse me.
10 Fifteen percent are nonsecretors
11 and eighty-five percent are
12 secretors?

13 A. Yes.

14 Q. Now, what happens when you mix -- isn't
15 it true that the secretor factor
16 when mixed with Type-O blood --
17 well, let's take another one.
18 Type-AB secretor when mixed with
19 another type blood that had a
20 nonsecretor -- from a nonsecretor
21 doing this secretor factor test
22 which I assume was done in this
23 case, you would end up with a
24 result -- you would end up with a
25 positive secretor factor, isn't
26 that correct?

27 A. Right. It's going to be coming from

JERRY MILLER

1 one of the persons if one of them
2 is a secretor.

3 Q. And that's because the secretor factor
4 is somewhat dominant, isn't that
5 correct?

6 A. That's correct.

7 Q. So that to get a positive secretor
8 factor, as you did when you
9 performed these tests on certain
10 stains, you could have been dealing
11 with stains from an individual who
12 had Type-A nonsecretor factor,
13 isn't that correct?

14 A. Okay, if the person -- since the victim
15 herself was a Type-O secretor, I
16 could have also been dealing with a
17 nonsecretor with similar stains.
18 So this nonsecretor could have been
19 any one of the four A-B-O types if
20 he would have been a nonsecretor.

21 Q. And there's a way to calculate
22 percentagewise, is there not --

23 A. That's correct.

24 Q. -- with relative certainty as to the
25 probability of this person's blood
26 type? You can say that if
27 forty-five percent of the

JERRY MILLER

1 population at large has Type-O
2 blood, and of that type eighty-five
3 percent are secretors --

4 A. That's correct.

5 Q. -- so those are the possible
6 individuals who would make up for a
7 positive secretor factor when mixed
8 with an "O" secretor?

9 A. Yes.

10 Q. You're going to multiply eighty-five
11 with forty-five and wind up with
12 38.5 percent?

13 A. That's correct, 38.5 percent.

14 Q. To get at the possible "A" nonsecretor
15 types who would also give you this
16 positive secretor reading when
17 mixed with an individual's blood,
18 Type-O secretor, you would take --

19 A. Forty percent times fifteen percent.

20 Q. Right. And you would end up --

21 A. And with the "B" you would take ten
22 times the fifteen.

23 Q. Okay.

24 A. And AB would be five times fifteen, and
25 you would add those together.

26 Q. So to arrive at a possible pool of
27 individuals who could have blood

JERRY MILLER

1 types consistent with the type that
2 you concluded the person whose
3 stains were on that clothing, you
4 would add 38.5 percent as the
5 possibles within the "O" category,
6 is that correct?

7 A. That's correct.

8 Q. 6.6 percent of the "A" category?

9 A. Right.

10 Q. 1.5 of the "B" category?

11 A. Yes.

12 Q. And .75 percent of the AB category, is
13 that correct?

14 A. Yes, I'd agree with that.

15 Q. And the total is 46.5 percent? Would
16 you like to add that?

17 A. Well it seems about right, yes.

18 Q. So out of the total population of
19 individuals, your results are
20 consistent with an individual who
21 could have a blood type the same as
22 46.5 percent of the total
23 population, isn't that correct?

24 A. I would agree with that roughly. Like
25 I say my percentages vary only
26 slightly with these, so I would
27 agree with that roughly.

JERRY MILLER

1 Q. And you tested stains on clothing, is
2 that correct?

3 A. On the napkin, sanitary napkin.

4 Q. You didn't perform any tests on the
5 slides themselves that were
6 prepared for this secretor-
7 nonsecretor factor, did you?

8 A. Not as far as blood typings on the
9 slide. Usually they don't have
10 enough stain on the slides, and
11 usually we have to dye these stains
12 to see the spermatozoa, so that
13 would mess up the test.

14 Q. You didn't perform a test on anything
15 that came out of the vaginal vault
16 of this victim, did you? No test --

17 A. There was nothing sent to me to test
18 other than the slides and the
19 sanitary napkin.

20 Q. Okay. Now, had there been a swab
21 furnished to you or some other
22 item, perhaps a tampon, you could
23 have tested that item, could you
24 not have, for this secretor-
25 nonsecretor factor?

26 A. If a vaginal slide would have been
27 sent, I would have tested it, yes.

JERRY MILLER

1 Q. And had you tested it and found a
2 positive secretor factor, that
3 individual could have been of a
4 blood typing system with 46.5
5 percent of the population, isn't
6 that correct?

7 A. Yes.

8 Q. That individual whose sperm was found
9 in this woman's vagina?

10 A. The stain would be consistent with
11 that, yes.

12 Q. But as it is, what your tests conclude,
13 since you performed tests on stains
14 that were found on clothing, what
15 your tests conclude is that the
16 individual who put the stains on
17 that clothing, the man, his blood
18 typing is consistent with that of
19 46.5 percent of the population,
20 isn't that correct?

21 A. That's correct, yes.

22 Q. And that's all that your tests would
23 establish, isn't that correct?

24 A. That's correct.

25 Q. Okay. Now, you've testified that Ms.
26 Talley from what you could tell by
27 the evidence that was furnished to

JERRY MILLER

1 you obviously was having her
2 period, was she not? The evidence
3 would indicate that?

4 A. Since there was a napkin there and it
5 was bloody and I had a note on the
6 submittal form that I had that the
7 victim was on the first day of her
8 menstrual cycle.

9 Q. And you took samples from the napkin
10 and the underwear, didn't you?

11 A. From the napkin, yes.

12 Q. Isn't it true that if a woman is having
13 her period, that can have some
14 bearing on this secretor-
15 nonsecretor factor so as to blur
16 your results?

17 A. It's a possibility. I might add, it's
18 a possibility if the bloodstain is
19 heavy enough, it will blur out the
20 seminal fluid. However, I feel
21 that the seminal fluid was strong
22 enough to pick up a type since I
23 did detect it.

24 BY MS. EVANS: I'll tender the witness.

25 BY THE COURT: Redirect?

26 BY MR. TOSTERUD: We just have one
27 question, Your Honor.

JERRY MILLER

1 REDIRECT EXAMINATION BY MR. TOSTERUD:

2 Q. From the information presented to you
3 in your analyses, were you able to
4 determine whether or not Dennis
5 Brown was a member of that 46.5
6 percent of the population referred
7 to there?

8 A. Yes. I determined that he was a Type-O
9 secretor, and the possibility is
10 that a Type-O secretor could have
11 left the stain.

12 Q. So he's included in the group --

13 A. He's included in the group of the
14 people that could have left the
15 stain.

16 BY MR. TOSTERUD: Your Honor, I have no
17 further questions. He can be
18 released.

19 BY THE COURT: Okay, you can step down
20 and you're released.

21 BY MS. EVANS: Your Honor, I would like
22 to offer the diagram. I would
23 offer it as Defense Exhibit-1.

24 BY MR. TOSTERUD: No objection, Your
25 Honor.

26 BY THE COURT: All right. Did you
27 offer it in evidence?