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APPELLATE COURT NO. _____

IN THE COURT OF APPEALS

HOUSTON, TEXAS

J. C. COWAN, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE.

APPEAL FROM THE 182ND DISTRICT COURT,

HARRIS COUNTY, TEXAS

JUDGE JOSEPH M. GUARINO, PRESIDING

STATEMENT OF FACTS

VOLUME _____ OF _____

JURY TRIAL

NOVEMBER 30, 1988

Jennifer Slessinger
Certified Shorthand Reporter
182nd District Court
Harris County, Texas

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NO. 492937

THE STATE OF TEXAS)	IN THE DISTRICT COURT OF
)	
VS.)	HARRIS COUNTY, T E X A S
)	
J. C. COWAN)	182ND JUDICIAL DISTRICT

BE IT REMEMBERED that upon this the 30th day of November, A. D., 1988, the above styled and numbered cause of action came to be heard for trial before the Honorable Joseph M. Guarino, Judge Presiding of the 182nd District Court of Harris County, Texas, and a jury; and the State appearing by counsel and the Defendant appearing in person and by counsel, announced ready for said proceedings; and all preliminary matters having been disposed of, a jury was duly impaneled and sworn, and proceedings had, the following facts were adduced in evidence, viz:

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

For the State of Texas:	Ms. Loretta Johnson Assistant District Attorney Harris County, Texas
-------------------------	--

For the Defendant:	Mr. Ronald Mock Attorney at Law Houston, Texas
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November 30, 1988

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THE COURT: Bring in the jury.

(WHEREUPON, THE FOLLOWING PROCEEDINGS
WERE HELD IN THE PRESENCE OF THE JURY.)

THE COURT: Thank you for your patience.
We have had other matters. Of course, you can't time it
right but we will proceed now. Any additional witnesses
in the audience that have not been sworn, would you
please stand at this time raise your right hand and be
sworn. Swear the witness, Ms. Clerk.

(WHEREUPON, THE WITNESS WAS SWORN BY
THE CLERK OF THE COURT.)

THE COURT: All right. You may lower
your hand and have your seat. Would you call your next
witness for the State, Ms. Johnson.

MS. JOHNSON: We call Officer Mercer.

THE COURT: Come up, please ma'am. Any
other witnesses in the audience, step out in the
hallway. Please have a seat there until you're called
to testify. The Rule has been invoked. It will remain
in effect thought the trial as I told you earlier when
you were sworn.

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S. M. MERCER,

was called as a witness by the State of Texas and,
having been first duly sworn by the Court, testified
as follows:

DIRECT EXAMINATION

By Ms. Johnson

Q. Officer, if you would introduce yourself to
the jury?

A. I'm Officer S. M. Mercer?

Q. How are you employed?

A. Houston Police Department.

Q. To what division are you assigned?

A. Westside patrol.

Q. How long have you been with the city?

A. Seven and a half years.

Q. How long have you been with Westside patrol?

A. Seven and a half years.

Q. And does that area include the area around
Rosewood Hospital and Tanglewilde Street?

A. Yes, ma'am.

Q. Okay. Did you have -- were you on duty back
on January 1st of this year?

A. Yes, ma'am, I was.

COPY

1 Q. And did you have an occasion to go to
2 Rosewood Hospital?

3 A. Yes.

4 Q. Where is that located?

5 A. It's about the 9200 block of Westheimer.

6 Q. On that occasion did you have a chance to
7 meet [REDACTED]?

8 A. Yes, ma'am.

9 Q. Did you see her here in the courtroom just a
10 few moments ago?

11 A. Yes, ma'am.

12 Q. What purpose were you there at Rosewood
13 Hospital?

14 A. She had been sexually assaulted and my
15 Sergeant thought that it would be easier for her if she
16 spoke with a female officer, so they requested me to go
17 over there.

18 Q. Did you meet with her?

19 A. Yes, I did.

20 Q. How would you describe her emotional state at
21 the time you met with her?

22 A. She was in a daze, kind of like she was in
23 shock.

24 Q. Did you have a conversation with her?

25 A. Yes.

1 Q. Did she tell you what had happened to her?

2 A. Yes, ma'am. She did.

3 Q. Did you also have an occasion to get what is
4 commonly termed a sexual assault evidence collection
5 kit?

6 A. Yes.

7 Q. And from what personnel did you receive it
8 from?

9 A. One of the nurses handed it to me.

10 Q. Is this while [REDACTED] was there?

11 A. Yes.

12 Q. And in what condition did you receive the
13 evidence kit?

14 A. It was sealed.

15 Q. I'm going to show you what's been marked as
16 State's Exhibit No. 9 and ask if you recognize State's
17 Exhibit No. 9?

18 A. Yes, ma'am. That's it. It has my signature
19 on it.

20 Q. Okay. What did you do with State's Exhibit
21 No. 9 after you received it?

22 A. I tagged it downtown.

23 Q. Did you ever break the seal on the kit?

24 A. No, I didn't.

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THE COURT: State's Exhibit No. 9 and
the contents therein.

MS. JOHNSON: Yes, Your Honor. And the
contents therein?

THE WITNESS: Yes.

THE COURT: Okay. Go ahead.

MS. JOHNSON: Pass the witness.

THE COURT: Your witness.

CROSS EXAMINATION

By Mr. Mock

Q. Officer Mercer, who did you say you received
that kit from?

A. One of the nurses.

Q. You don't know which nurse it was?

A. Not offhand. I don't remember her name.

Q. So you got to the hospital and somebody who
appeared to be a nurse to you handed you that and you
don't know who it was?

A. She was a nurse. It's been a year. I don't
remember her name.

Q. But you just don't know who it was?

A. It was a nurse.

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MR. MOCK: Okay. Pass the witness.

MS. JOHNSON: No questions, Your Honor.

THE COURT: Please step down. Come up to the bench, the attorneys please.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD AND PROCEEDINGS CONTINUED ON THE RECORD.)

THE COURT: You are excused. You may leave and go about your business. The Rule has been invoked and it shall remain in effect throughout the testimony.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD AND PROCEEDINGS CONTINUED ON THE RECORD.)

THE COURT: Let's proceed. Call your next witness.

MS. JOHNSON: We call Officer Kyle Evans.

THE COURT: Proceed when you're ready, counselor.

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KYLE EVANS,

was called as a witness by the State of Texas and,
having been first duly sworn by the Court, testified
as follows:

DIRECT EXAMINATION .

By Ms. Johnson

Q. If you would, Officer Evans, state your name
for the jury?

A. Kyle Evans.

Q. How are you employed, sir?

A. I'm a Houston police officer assigned to the
juvenile division.

Q. How long have you been a police officer with
the City of Houston?

A. Since November of 1975.

Q. How long have you been -- I'm sorry, did you
say juvenile sex crimes or sex crimes?

A. I'm assigned to the juvenile division to
investigate sexual abuse of children.


Q. Okay. How long have you been in that
division?

A. For about three years.

1 Q. Is it fair to say that you've investigated
2 crimes, sex crimes against children on many occasions?

3 A. Yes, ma'am.

4 Q. Did you have a chance to participate in the
5 investigation of the case where the child involved was

6 ?

7 A. Yes, I did.

8 Q. Did you see her here in the courtroom this
9 morning?

10 A. Yes, ma'am.

11 Q. When did you first receive the case?

12 A. I received the case on January 6th of this
13 year.

14 Q. Okay. Did you have an opportunity to read a
15 report and statement of the trial?

16 A. Yes, I did.

17 Q. Tell the jury what investigations you
18 performed in the case?

19 A. Okay. After I received the case for
20 followup, I read all the available information that had
21 been turned in by the patrol officers who had made the
22 initial scene when the young lady was found. I took the
23 information that was in that report and I did a computer
24 check to try to determine who the actual defendant would
25 be.

COPY

1 Q. Did you make a determination as to who this,
2 did you read what she said in her statement?

3 A. Yes, I did.

4 Q. What was that person's name?

5 A. J.C.

6 Q. Did you later learn J.C.'s last name?

7 A. Yes, I did.

8 Q. What was that?

9 A. Cowan.

10 Q. Do you see him in the courtroom today?

11 A. Yes, ma'am.

12 Q. If you would point to him and identify an
13 article of clothing that he's wearing?

14 A. This gentleman here in the -- I guess you
15 call that a gray jacket with the moustache and chin
16 whiskers.

17 Q. This one. The thinner gentleman, this one?

18 A. Yes.

19 MR. MOCK: Objection to the side bar.

20

21 THE COURT: Are you talking about the
22 person seated closest to the bench?

23 THE WITNESS: Yes, I am.

24 MS. JOHNSON: May the record reflect he
25 has identified the defendant in this case.

1 THE COURT: Yes. Move on.

2

3 BY MS. JOHNSON:

4 Q. Based on that information, did you ask for an
5 arrest warrant to be filed? Did you seek charges
6 against J.C. Cowan?

7 A. Yes, I did.

8 Q. Were those charges filed?

9 A. Yes, ma'am.

10 Q. On what day were they filed?

11 A. January 21st.

12 Q. Okay. Did you have an opportunity to serve
13 the arrest warrant on this defendant?

14 A. Yes, I did.

15 Q. Did you learn what address he was residing at
16 the time when you attempted to serve that arrest
17 warrant?

18 A. Yes, ma'am. I did.

19 Q. Where was that?

20 A. Where was the arrest warrant served at?

21 Q. Yes. Uh-huh.

22 A. 6525 South Gessner, Apartment 2025.

23 Q. Is that the same area of town where
24 Tanglewilde Street would be?

25 A. It's very close.

COPY

1 Q. Did you go out there?

2 A. Yes, ma'am.

3 Q. What happened after you went to that
4 location? what happened when you went out there?

5 A. Okay. We secured a master key to the
6 apartment, called a couple of uniform officers. Myself
7 and another officer from the juvenile sex crimes unit
8 served the warrant and arrested the suspect.

9 Q. Would you describe the circumstances of the
10 arrest when you arrived there to arrest him?

11 A. Yes, ma'am. When we first arrived at the
12 apartment, I noticed that the door was pushed closed,
13 but not latched, and because of the fact that it was a
14 felony warrant and for the officers' safety, I pushed
15 the door open and yelled, "Police." And stepped inside,
16 immediately confronting the defendant, Mr. Cowan.

17 At that time a lady who was with him in the
18 apartment attempted to jump out the balcony.

19 Q. What was her name that you later learned?

20 A. Sandra Richardson.

21 Q. What happened after that?

22 A. She was caught and brought back into the
23 apartment. The apartment was -- then as she was being
24 caught by the other officers, I cleared the apartment
25 for any other suspects that might be hiding in the

1 apartment.

2 Q. Did you see anything in the apartment while
3 you were there? Did you see any weapons?

4 A. Yes, I did.

5 Q. What did you see?

6 A. There was a large folding knife laying on the
7 TV in the bedroom.

8 Q. I'm going to show you State's Exhibit No. 5
9 and ask you if you recognize State's Exhibit No. 5?

10 A. This is the knife I recovered from the
11 television.

12 Q. Okay. Did you take any clothing from that
13 apartment?

14 A. Yes.

15 Q. Could you tell the jury the circumstances in
16 which you took the clothing from the apartment?

17 A. After Mr. Cowan was first handcuffed, he was
18 taken to a police car and secured in the backseat and
19 and an officer was left there to watch him. As we
20 finished up with securing his apartment, making sure
21 there were no other suspects there that might endanger
22 us, I went down and read him his rights. He followed
23 me. He had some money he wanted to get and I brought
24 him back up to the apartment with the other officers and
25 he told us where that money was. We got it and put it

COPY

1 in his pocket.

2 As we were walking back out the door, he ask
3 for a jacket. There was a, what we use to call a hall
4 tree, a coat tree by the door and he indicated that he
5 wanted a black jacket off of that hall tree. We gave
6 him the jacket and then left.

7 Q. Let me show you State's Exhibit No. 8 and ask
8 if you recognize State's Exhibit No. 8?

9 A. That's the jacket that he ask for.

10 Q. Where was he taken from there?

11 A. To the central police station.

12 Q. In addition to learning his name, were you
13 ever able to learn his age or approximate age?

14 A. Yes, I did.

15 Q. What was that?

16 A. His date of birth was in '54, so he would be
17 about 33 years old.

18 Q. Okay.

19 A. Do you need his exact date of birth?

20

21 Q. No. Officer Evans, do you -- do you recall
22 receiving a report from Ronshon Jeffery about a car that
23 was at her apartment complex?

24 A. Yes, ma'am. I did.

25

1 Q. And was there identification taken from the
2 car in which [REDACTED] pointed to, is there a
3 license plate?

4 A. Yes, she picked out --

5 MR. MOCK: Objection. What she did or
6 said, that's hearsay.

7 THE COURT: All right. Sustain the
8 objection at this time, but go ahead and repeat your
9 same question you ask. Listen to the question. Don't
10 volunteer anything other than the answer to the
11 question.

12

13 BY MS. JOHNSON:

14 Q. Your answer is yes you did take that
15 recordation of the car that she pointed to, of the tags.
16 Did you run the tags?

17 A. Yes.

18 Q. Who did the car come back registered to?

19 A. Walter Robinson.

20 Q. Does he have another name?

21 A. Yes, he does.

22 Q. What is that name?

23 A. Slim, Joseph Phillips, BoBo, Walter Robinson
24 and Walter Robinson.

25

COPY

1 Q. Is he also known by the name of Joseph
2 Stewart or Thomas Stewart.

3 A. Joseph Stewart and Thomas Stewart.

4 Q. Yes, sir. Did you reach a conclusion as to
5 whether or not Mr. Robinson, Stewart, or Phillips knows
6 this defendant, J.C. Cowan?

7 A. Yes, I did.

8 Q. What was that conclusion?

9 MR. MOCK: Objection, Your Honor.

10 THE COURT: Sustain the objection at this
11 time, counselor. Go to the next question.

12

13 BY MS. JOHNSON:

14 Q. Did you later learn how this defendant came
15 to Willowcreek Apartments? Did you later receive
16 information about that?

17 A. Yes, I had information that --

18 MR. MOCK: Objection, Your Honor.

19 THE COURT: Sustain the objection. Don't
20 answer it.

21

22 BY MS. JOHNSON:

23 Q. Did that opinion as to whether or not the two
24 individuals who knew each other ever change?

25 A. No.

1 MR. MOCK: Objection, Your Honor.

2 THE COURT: Sustain the objection.

3 MR. MOCK: I ask for a jury instruction,
4 Your Honor.

5 THE COURT: Disregard the last answer of
6 the witness and you are not to consider it for any
7 purposes whatsoever, ladies and gentlemen of the jury.

8 MR. MOCK: Ask for a mistrial.

9 THE COURT: Overruled and denied,
10 counselor.

11

12 BY MS. JOHNSON:

13 Q. Officer Evans, did you have an occasion to
14 seek the execution of a search warrant for certain
15 bodily fluids and hairs from J.C. Cowan?

16 A. Yes, I did.

17 Q. Who drew up that warrant?

18 A. I believe you did.

19 Q. Did you have an opportunity to execute that
20 warrant?

21 A. Yes, ma'am. I did.

22 Q. Okay. When did you execute that search
23 warrant?

24 A. 10th day of February of this year.

25 Q. And where was that done?

COPY

1 A. The Harris County Jail Clinic.

2 Q. Were you present when the samples were taken
3 from the defendant?

4 A. I was.

5

6 (WHEREUPON, STATE'S EXHIBITS NO.
7 10, 10A, 11, AND 12 WERE MARKED FOR IDENTIFICATION.)

8

9 BY MS. JOHNSON:

10 Q. Officer Stewart, I'm going to show you -- I'm
11 sorry, Officer Evans -- I'm out of it -- show you
12 State's Exhibit No. 10 and ask you if you recognize
13 State's Exhibit No. 10?

14 A. This is an envelope, evidence envelope. This
15 portion of the evidence is the druggist's fold.

16 Q. Are we now talking about 10A?

17 MS. JOHNSON: If you would identify that
18 as State's Exhibit No. 10A.

19 MR. MOCK: Ten is the envelope.

20

21

22 BY MS. JOHNSON:

23 Q. What is State's Exhibit No. 10A, that's
24 contained in State's Exhibit No. 10?

25 A. Hair samples from the complainant.

1 Q. Okay. Did you witness that also?

2 A. Yes.

3 Q. When did you have the hair samples from the
4 complainant pulled?

5 A. There was a second set done on February 4.

6 Q. Okay. That's when you had her come in for
7 that?

8 A. I believe I went to the high school and did
9 it in one of the principal's offices.

10 Q. Okay.

11 MR. MOCK: That is from the complainant.

12

13 BY MS. JOHNSON:

14 Q. He had a second set done. State's Exhibit
15 No. 11?

16 A. These are hair samples from the defendant.

17 Q. When were they taken?

18 A. February 10.

19 Q. Okay. Where was that taken?

20 A. At the Harris County Jail Clinic.

21 Q. You were present when they were taken?

22 A. Yes, I was.

23 Q. State's Exhibit No. 12, that came from this
24 envelope that hasn't been marked?

25 A. May I open this.

COPY

1 Q. Please.

2 A. Okay. This is a vial of blood that was taken
3 from the defendant, Mr. Cowan, at the jail hospital.
4 County jail hospital.

5 Q. Okay. Were you present when that was taken?

6 A. Yes, I was.

7 Q. With respect to all of the exhibits, State's
8 Exhibit No. 10, 10A, 11, and 12, did you place each of
9 the exhibits into a sealed container?

10 A. Yes, I did.

11 Q. What did you do after?

12 A. Excuse me. Let me correct that statement.

13 Q. Okay.

14 A. The blood was taken by a hospital technician
15 not by me. It was done in my presence and placed into
16 this sealed vial.

17 Q. In your presence?

18 A. In my presence. All of the samples were
19 taken in my presence. Some were taken by me and some
20 were taken by medical personnel and Mr. Cowan gave up
21 some himself and they were all placed into individual
22 sealed containers that were kept by me until they were
23 tagged in the appropriate place.

24 Q. What did you do with those items after you
25 received them in a sealed container?

1 A. They were submitted for --

2 Q. Were they tagged?

3 A. Yes, they were tagged.

4 Q. Where were they tagged?

5 A. They were tagged in the Houston Police
6 Department crime lab.

7 Q. Okay.

8 MS. JOHNSON: Your Honor, at this time
9 let the record reflect I have tendered to counsel for
10 his inspection, State's Exhibit No. 10, 10A, 11, and 12
11 and move for their admission.

12 MR. MOCK: One question, Your Honor,
13 please.

14
15 VOIR DIRE EXAMINATION

16 By Mr. Mock

17
18 Q. Detective Evans, you said they were tagged in
19 the lab?

20 A. Yes, sir.

21 Q. Was that done by you?

22 A. Yes, sir.

23 MR. MOCK: Nothing further, Judge. We
24 have no objections.

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THE COURT: You have no objections. Let the record show there is no objections to it, so they are all admitted into evidence, State's Exhibit 10, 10A, 11, and 12. No objections thereto.

MS. JOHNSON: Pass the witness.

MR. MOCK: May I have just a minute, Your Honor.

THE COURT: Take whatever time you feel you need to.

CROSS EXAMINATION

By Mr. Mock

Q. Officer Evans, do you have a copy of the search warrant for the body fluids and hairs of Mr. Cowan?

A. Yes, I do.

Q. May I have it please.

A. Yes, sir.

MR. MOCK: May I approach the witness, Your Honor.

THE COURT: Sure.

BY MR. MOCK:

Q. Do you have the affidavit?

1 A. Yes, sir.

2 Q. Can I have that please. And is that the
3 return?

4 A. Yes, sir.

5 Q. May as well give that to me?

6 MR. MOCK: May I have a moment to look at
7 these, Judge.

8 THE COURT: Yes, sir.

9 MR. MOCK: Judge, may I approach the
10 clerk I need to look in the file for a minute.

11 THE COURT: Ladies and gentlemen of the
12 jury, please retire into the jury room and I'll call you
13 out in a minute.

14
15 (WHEREUPON, THE FOLLOWING PROCEEDINGS
16 WERE HELD OUT OF THE PRESENCE OF THE JURY.)

17
18 THE COURT: All right, Mr. Mock. The
19 jury has been retired from the courtroom.

20 MR. MOCK: Judge.

21 THE COURT: Tell me whatever you have to.
22 Put it in the record please.

23 MR. MOCK: Judge, in looking at the
24 Court's file, I see no search warrant for bodily fluids
25 or, bodily fluids or anything else of J.C. Cowan's or no

COPY

1 attachment of an affidavit. The law clearly states that
2 prior to the warrant being issued, there must be an
3 affidavit. Mr. Cowan was never served an affidavit and
4 there is not one in the file and based on their absence,
5 I object to the validity of the search warrant and there
6 by renew, urge, and object now to the contents of those
7 items which were taken from Mr. Cowan based on an
8 invalid search warrant.

9 THE COURT: Do you have anything you want
10 to say for the State?

11 MS. JOHNSON: It's waived. The evidence
12 has been admitted.

13 THE COURT: I will overrule his objection
14 at this time. But I want the record to show this
15 please. All right, counselor.

16 MR. MOCK: All right.

17 THE COURT: I put it in the record for
18 you. All right. Bring the jury out, Mr. McCray.

19

20 (WHEREUPON, THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THE PRESENCE OF THE JURY.)

22

23 THE COURT: Have your seats please. All
24 right. Let's proceed, Mr. Mock.

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MR. MOCK: That's all I had, Judge, of
this witness.

THE COURT: Anything further of this
witness at this time?

MS. JOHNSON: No, sir.

THE COURT: Will you step down and remain
out in the hallway until I excuse you. Call your next
witness.

MS. JOHNSON: We call Jim Bolding.

THE COURT: The rule has been invoked Mr.
witness and will remain in effect throughout the trial.
Do you understand that?

WITNESS: Yes, your Honor, I do.

THE COURT: Have a seat and keep your
voice up please and talk to the members of the jury.
You can proceed whenever you're ready, Ms. Johnson.

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JAMES R. BOLDING,

was called as a witness by the State of Texas and,
having been first duly sworn by the Court, testified
as follows:

DIRECT EXAMINATION .

By Ms. Johnson

Q. Sir, if you would state your name for the jury?

A. My name is James R. Bolding.

Q. How are you employed?

A. I'm employed at the City of Houston at the crime lab.

Q. And what position do you hold there at the crime lab?

A. I'm the supervisor of the serology section in the crime lab.

Q. What are your duties as supervisor of the serology section of the crime lab?

A. I'm a working supervisor, so I take cases and there are chemists and serologists that work under my direction. So I take cases and work cases and I also give guidance to those individuals that work in the serology section.

1 Q. What is serology?

2 A. Serology is that area of Forensic Science or
3 any science that analyzes bodily fluids in a Forensic
4 setting. It is the body fluids that may be related to
5 possible crimes that are analyzed.

6 Q. And if you would tell the jury what your
7 educational and professional qualifications are for the
8 position that you hold there as supervisor of the
9 serology section of the crime lab?

10 A. I have a B.S. and M.S. Degree in biology and
11 biochemistry from Texas Southern University. I have
12 further credits towards the PhD. Degree in biochemistry
13 at the University of Texas and I have undergone training
14 in serology at the Houston Police Department laboratory,
15 at the FBI academy, at the serological research in
16 Amville, California. Also at the Alcot Genetics Company
17 in Atlanta, Georgia.

18 Q. What is a blood analysis?

19 A. A blood analysis is basically an analysis to
20 attempt to identify what type of blood usually that's
21 found at a crime scene.

22 Q. And what is the significance of the
23 information that you obtain from a blood analysis?

24 A. It serves to differentiate between the people
25 that are at a particular crime scene so that if there

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1 were five individuals there, we may be able to sort
2 through those individuals on the basis of their blood
3 type.

4 Q. What is saliva analysis?

5 A. Saliva analysis analyzes for the presence of
6 secretor information. That is for blood type that is
7 found in saliva and that is the secretor, the testing
8 procedure.

9 Q. What is a secretor?

10 A. Secretors are human beings. First that
11 secrete their blood group their blood type into other
12 body fluids besides their blood. This is not unusual,
13 some 80 percent of all human beings in the world are
14 said to be secretors and therefore 20 percent of the
15 people in the world are said to be known secretors.

16 Q. How many different blood types are there?

17 A. The most commonly known blood type or the
18 most commonly known blood types we as laymen understand,
19 there are four. There are A, B, AB, and type O.

20 Q. What percentage of the population would have
21 a type O?

22 A. Approximately 45 percent of the population is
23 said to be type O.

24 Q. Okay. Mr. Bolding, what is a sexual assault
25 evidence collection kit?

1 A. It's a box or a package or an envelope that
2 contains items of specimen that were collected on
3 potential sexual assault victims or complainants at or
4 near the time that they were alleged to have been
5 assaulted. So that various and sundry items are taken
6 from her body by physicians and nurses, practitioners in
7 the hospital there, after an alleged sexual assault.

8 Q. How many analysis have you yourself done on a
9 sexual assault kit?

10 A. I would estimate in the thousands probably.

11 Q. Okay. And as a supervisor of the technicians
12 there at the serology section of the crime lab, how many
13 have you had to oversee?

14 A. Probably equally, thousands.

15 Q. I'm going to show you State's Exhibit Nos. 9
16 and the contents contained therein in State's Exhibit
17 No. 9 going through State's Exhibit No. 9A through 9I,
18 if I'm not mistaken. How would this kit have been
19 received in the crime lab?

20 A. It would have been received in a sealed
21 condition. That has with a tamper proof seal on it.

22 Q. And what is done with the sexual assault kit
23 once it is received in the crime lab?

24 A. It is inventoried and labeled as to a
25 specific name or person to be associated with. Usually

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1 it's the complaining witness's name.

2 Q. If you would, going through each item in
3 State's Exhibit No. 9, identify it by the State's
4 Exhibit that's on it and tell the jury step by step what
5 type of analysis would be done on each exhibit?

6 MR. MOCK: I re-urge my objection the
7 chain of custody is not complete as to any chemical or
8 laboratory analysis done. I don't object to the
9 admissibility but I object to the testimony of, from, or
10 about it from this point on because the chain is not
11 complete.

12 THE COURT: Overruled.

13 MR. MOCK: Please note our exception.

14 THE COURT: Go ahead. You may testify.

15 THE WITNESS: State's Exhibit 9A are two
16 packets that are labeled right and left fingernail
17 scrapings. An analysis on these two items would be for
18 dirt and debris or hair or fibers that may be taken off
19 of the body of a potential suspect by the, by a
20 potential victim so that if she indeed did scratch him,
21 we could find characteristics of that individual under
22 the fingernail scrapings in this particular, in these
23 envelopes.

24 State's Exhibit No. 9G is a cardboard
25 container labeled rectal swabs and again the rectal swab

1 is analyzed for the presence of foreign secretions.
2 Foreign secretions in a sexual assault would be the
3 presence of semen, spermazoa, and any male ejaculate
4 that may be present.

5 State's Exhibit No. 9F is label known saliva.
6 None saliva in a sexual assault is used as a factor, a
7 known factor to subtract from any secretions that may be
8 foreign or potentially be foreign in the analysis. That
9 is if indeed the complainant witness were of a certain
10 type, we would have to know that and subtract that
11 factor from any secretions found eventually.

12 State's Exhibit No. 9E is a plastic container
13 labeled vaginal smears. We would mount the glass
14 containers inside on a microscope and physically look
15 for spermazoa, sperm cells.

16 State's Exhibit No. 9D is a packet and
17 envelope labeled known head hairs and again the known
18 samples from the potential complaining witness, from the
19 complainant witness would be very necessary in
20 identifying anything that would be foreign.

21 State's Exhibit No. 9C is a packet of known
22 pubic hair and again known pubic hair, if indeed foreign
23 pubic hair would be found, we would be able to
24 distinguish whether they were foreign by comparing it to
25 the known samples of the complaining witness.

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State's Exhibit No. 9B is an envelope, a large envelope that is labeled pubic hair combing and it is a fact that in some cases, hairs from the pubic area of a suspect or an alleged suspect may transfer to the pubic area of a victim. This is, if that area is combed after the sexual assault we can then, we have a possibility of finding foreign hairs and this is the packet in which we would find the foreign pubic hairs.

State's Exhibit No. 9H is a cardboard container labeled vaginal swabs. This is again a large Q-tip to examine the vaginal cavity, the vaginal cavity of the complaining witness so if semen is found, one can identify the semen and attempt to associate it with an individual.

State's Exhibit No. 9I is a vial of blood in a plastic ziploc bag and this is a known sample of blood. Again on the complaining witness so that her known factors are very important, so we may be able to identify any foreign factors that are found. This bag is marked miscellaneous evidence with nothing in it, et cetera.

Q. Okay. Mr. Bolding, if a known vial of blood was taken from a suspect, it's not labeled and sealed in an envelope with the same type of analysis that you described be performed on that vial as well?

1 A. Yes, ma'am.

2 Q. Would there be comparison test done between
3 the known vial of blood from a suspect and the evidence
4 from the sexual assault collection kit?

5 A. Yes, there would be.

6 Q. Okay. Looking at State's Exhibit No. 12, for
7 the records came from an envelope with and L number on
8 it. Do you know whether or not those items contained in
9 State's Exhibit No. 9 and State's Exhibit No. 9, it
10 being the sexual assault evidence collection kit, does
11 it have numbers that correspond?

12 A. Yes, ma'am. It does.

13 Q. And what is that number?

14 A. L88-56.

15 Q. Okay. What does that number represent?

16 A. It represents the unique number assigned to
17 this case and any laboratory and any evidence that comes
18 in associated with the complaining witness's name on it
19 or a potential defendant's name on it would all have the
20 same laboratory number L88-56.

21 MS. JOHNSON: At this time, I'm going to
22 tender to defense counsel State's Exhibit 9 and 9A
23 through I and move for its admission at this time.

24 MR. MOCK: We re-urge our objection based
25 on the chain of custody.

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THE COURT: Overruled and denied,
counselor.

BY MS. JOHNSON:

Q. What were the results on lab number L88-56,
Mr. Bolding?

A. We detected semen, that is the product of
male ejaculation on the vaginal smear and vaginal swab
that were contained in the sexual assault evidence
collection kit.

Q. Were you able to determine the blood type of
the complainant?

A. Yes, ma'am. We were.

Q. And what was that?

A. We determined that the complainant had type O
blood.

Q. Was she a secretor or non-secretor?

A. She was a non-secretor.

Q. What does that mean again?

A. It means that on a sample taken from her
body, any blood types would be from a potential
defendant, we could not expect to find her blood
grouping in her body.

Q. Were you able to determine the blood type of,
excuse me, of the vial that was submitted to you from

1 State's Exhibit No. 12?

2 A. Yes, ma'am. We were.

3 Q. And what was that blood type?

4 A. It was also type O.

5 Q. And was that a secretor or a non-secretor?

6 A. It was a secretor. That is the blood in that
7 vial was from a type O secretor.

8 Q. Did you run a test for enzymes?

9 A. Yes, ma'am. We did.

10 Q. And if you would explain to the jury what the
11 enzymes tests are?

12 A. Enzymes or enzymes testing is a more
13 sophisticated way of trying to identify or differentiate
14 human beings. We are familiar with the concept that all
15 of us have blood types, but not all blood types are
16 going to be exactly the same. The enzymes were
17 basically the same situation that we can further break
18 down blood patterns or genetics from a human being and
19 identify that human being on the basis of his or her
20 enzymes or genetic factors and that's what the enzymes
21 were run.

22 Q. Were comparison tests done between State's
23 Exhibit No. 12 which was the vial of blood and State's
24 Exhibit No. 9H which was the vaginal swab?

25 A. Yes, ma'am. They were.

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1 Q. What were the result of the comparison test?

2 A. We found that the complaining witness was an
3 enzymes PGM type one, one plus. The vial from the
4 defendant contained enzymes type two plus one plus. So
5 that they were different.

6 Q. That's State's Exhibit No. 12?

7 A. Yes, ma'am.

8 Q. What is the significance of those results?

9 A. The significance is that in a side by side
10 comparison, we could identify the blood from that tube
11 from the blood from the complaining witness at any time
12 we ran the same or comparable test.

13 Q. Based on that, could the suspect be, the
14 defendant be eliminated as a possible donor of the semen
15 on that vaginal swab?

16 A. Right. The vaginal swab contained type O
17 secretor activity and also two plus one plus activity
18 meaning that the enzymes and the blood grouping
19 activity, the secretor activity could have come from an
20 individual with this particular blood type.

21 Q. Such as the defendant?

22 A. That's correct.

23 Q. Do you know whether or not, did you also
24 receive in evidence a pillow case?

25 A. Yes, ma'am.

1 Q. Do you know whether or not any blood was
2 indicated on that pillow case?

3 A. There was blood indicated on the pillow case.
4 Yes, ma'am.

5 MS. JOHNSON: Pass the witness.

6 THE COURT: Go ahead.

7 MR. MOCK: Please the Court. May I
8 proceed.

9 THE COURT: Go ahead.

10

11 CROSS EXAMINATION

12 By Mr. Mock

13

14 Q. Mr. Bolding, you've told us a lot about
15 enzymes test and phosphate test for semen and all that
16 stuff, but those test are exclusionary test as opposed
17 to inclusionary test?

18 A. They are run basically as exclusionary tools.
19 Yes.

20 Q. And they can't tell you who did what to
21 somebody, can they?

22 A. They cannot put a name on it. No, sir.

23 MR. MOCK: Pass him.

24 THE COURT: Any other questions?

25 MS. JOHNSON: No, Your Honor.

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THE COURT: Come up to the bench both of the attorneys please.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD AND PROCEEDINGS CONTINUED ON THE RECORD.)

THE COURT: You are excused and may leave and go about your business. The Rule will remain within the limits of the trial. Ladies and gentlemen of the jury, please will you tell the witnesses to step inside the courtroom please. All witnesses step in the courtroom. We are going to recess at this time until 1:30. 1:30 this afternoon, we will proceed with the trial of the case. The Court has a meeting to attend at 12:00 o'clock, so we are going to recess now, ten minutes to 12:00, but at 1:30 this afternoon we will continue with the trial.

Take this of course as your lunch period and again I repeat that you may separate. You may go your own individual ways during this particular recess, but under no circumstances are you to discuss the case or the facts of the case between yourselves or with anyone else. If anyone attempts to discuss the case, of course, let me know when you return at 1:30 this