

1963

# Court of Appeals of Virginia

RECORD NO. 271100000

1963-1964

Appellate

COMMONWEALTH OF VIRGINIA

Appellate

1963-1964

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Council for Appellate

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MR. GOCHENOUR: Call Elmer

Gist, Jr.

ELMER GIST, JR.,

a witness called by the Commonwealth, first being  
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GOCHENOUR:

Q If you'll bear with me a moment.  
I need to retrieve this. Tell us your name, sir.

A Yes, sir. My name is Elmer  
Gist, Jr.

Q And how are you employed?

A I am employed with the Division  
of Forensic Science, the criminal laboratory of the  
Commonwealth. I work in the Roanoke regional

1 office. I am the supervisor of the blood, body  
2 fluids serology testing unit. And I specialize in  
3 the identification and comparison of hairs and  
4 natural fibers.

5 Q Okay. And how long have you  
6 been doing this?

7 A Just over 18 years.

8 Q All right. And you're with the  
9 crime lab in Roanoke right now; is that correct?

10 A That's correct; the division of  
11 Forensic Science. It's a state lab system in the  
12 Roanoke western laboratory.

13 Q And what did you do before that?

14 A I worked for the FBI for a  
15 period of approximately eight-and-a-half years.

16 MR. WILKINS: Your Honor, I'll  
17 stipulate his qualifications.

18 MR. GOCHENOUR: All right.

19 Thank you.

20 BY MR. GOCHENOUR: (Continuing)

21 Q In the course of your  
22 employment--well, let me show you this document and  
23 ask if you can identify this for us?

24 A Yes, sir. This is the original  
25 of a lab report certificate of analysis that I

1 completed.

2 Q And who's noted as the victim on  
3 that report?

4 A [REDACTED].

5 MR. WILKINS: Your Honor, I  
6 think at this point, I'm going to object.  
7 There's no foundation for this report  
8 based upon the chain of custody of this  
9 particular item that was analyzed. I  
10 think it needs--

11 THE COURT: Can you stipulate  
12 it?

13 MR. WILKINS: There are two  
14 reports, Your Honor. One--Both of them as  
15 a result of the PERK Kit. The PERK Kit  
16 went from Westmoreland County to Richmond,  
17 and I stipulated that. Part of it then  
18 went, apparently, to Mr. Gist's office in  
19 Roanoke; and I have not stipulated that,  
20 nor will I stipulate that because I don't  
21 know what happened.

22 MR. GOCHENOUR: We can ask  
23 about that first, Your Honor.

24 MR. WILKINS: I think he needs  
25 to lay a foundation.

1 BY MR. GOCHENOUR: (Continuing)

2 Q How did you get the samples that  
3 you refer to in the report?

4 A I received them in an envelope,  
5 which I have in my possession. It's a stamped,  
6 sealed envelope by our courier security van.

7 Q Let me slow down a little bit.  
8 This envelope came into your possession; and who  
9 did you get it from; or how did you receive this?

10 A I received it from the security  
11 officer in the Western Laboratory. The security  
12 van arrived, and the evidence that's submitted in a  
13 lockbox is distributed to the examiners that will  
14 be receiving the case. This happened to be a hair  
15 case; so, I was given the envelope out of the  
16 lockbox.

17 Q Okay. A security van--Is there  
18 a van that just transmits evidence back and forth  
19 between your lab and Richmond?

20 A Yes. By a police officer who  
21 works for the Division of Forensic Science.

22 Q Okay. And tell us the condition  
23 of this envelope when you received it, please; and  
24 tell us if it's changed any from then until now?

25 A The top of this envelope was

1 tape-sealed with Commonwealth of Virginia Division  
2 of Forensic Science tape. Initials appear on the  
3 tape that are consistent with Lisa Schumaker who  
4 works in the serology section in Richmond.

5 Q That's still sealed, now?

6 A Yes. Her seal is intact. I  
7 opened the opposite end of the envelope. And it  
8 was gum label sealed by the manufacturer.

9 Q All right. Are the actual  
10 samples in that envelope right now?

11 A They are, yes.

12 MR. GOCHENOUR: I will move to  
13 introduce these as Commonwealth's Exhibit  
14 No. 2.

15 MR. WILKINS: I'm going to  
16 object on the basis that he received this  
17 envelope. It's got somebody's initials on  
18 it. It came out of a truck. We don't  
19 know who drove the truck. It got from  
20 Richmond to Roanoke some way. But that's  
21 exactly what chain of custody is, Your  
22 Honor. How did it get there?

23 MR. GOCHENOUR: I believe--

24 THE COURT: Where did it  
25 originate?

1 MR. GOCHENOUR: As it's  
2 stipulated, these samples were taken to  
3 the forensics lab in Richmond.

4 MR. WILKINS: On 14th Street in  
5 Richmond.

6 THE COURT: And you stipulate  
7 they got there?

8 MR. WILKINS: I stipulate they  
9 got there. No problem.

10 THE COURT: You've been reading  
11 Virginia Lawyers Weekly?

12 MR. WILKINS: I read it from  
13 time to time.

14 MR. GOCHENOUR: I think I must  
15 have missed something. Barring something  
16 the Court has read that I have not--It's  
17 my understanding--and there was a court  
18 case that actually came out of this  
19 jurisdiction where it addressed the issue  
20 of that there's a presumption of  
21 correctness between chain of evidence. It  
22 was actually a murder case, I believe Mr.  
23 Weimer tried it, where there was blood  
24 that was transmitted from one state agency  
25 to another state. And the Court of

1 Appeals held that there was a presumption  
2 that it was handled correctly. And if the  
3 Court likes, we can either take a recess  
4 to find that information; or we can  
5 address the issue later.

6 THE COURT: I think somebody,  
7 somewhere, attacked the chain of command  
8 between what has happened in the  
9 laboratory in Richmond and transferring it  
10 up to your lab in Roanoke. And it just  
11 creates an additional problem here. But I  
12 frankly cannot remember how that was  
13 resolved or what the outcome was or even  
14 which case or court it was in.

15 MR. GOCHENOUR: I suspect Mr.  
16 Wilkins can tell us.

17 MR. WILKINS: As a matter of  
18 fact, I do not recall which Court it was  
19 in. It is my recollection, Your Honor,  
20 that the evidence was excluded because you  
21 got a great big gap of 140 miles in the  
22 chain of custody.

23 And quite frankly I think what  
24 you need in these initials are to say  
25 that, yeah, that she did that, or whoever

1 did it, and then whoever took it. That's  
2 what the problem is, here. You've got it  
3 lost. If I didn't stipulate that it went  
4 from here to Richmond, they would have to  
5 have Mr. Stanbridge, here, Deputy  
6 Stanbridge, here, say that he took it to  
7 Richmond. That's the whole--

8 MR. GOCHENOUR: As a practical  
9 point, we have people like Dave Stanbridge  
10 around who can testify that he took things  
11 down to Richmond. Obviously, if every  
12 court in the state starts getting every  
13 examiner to come to court and testify,  
14 yes, that's my seal, that's my initials.  
15 Then we've got to have someone from the  
16 van who transported it. Well, what if  
17 it's sent by mail, which I believe the law  
18 also provides for? Are you going to bring  
19 in postal workers to testify to these  
20 things? Obviously, they're not going to  
21 be able to remember. I believe why  
22 there's a statutory presumption, which if  
23 the defense can attack by subpoenaing  
24 people to show that it's not been done  
25 properly. My understanding is that there

1 is a statutory presumption of correctness  
2 in the chain of custody between such state  
3 agencies as these.

4 THE COURT: Well, you tell me  
5 where it is; and I'll take it into  
6 consideration. But I can't assume. I  
7 don't know anything about it. I know this  
8 question has been raised. It's a logical  
9 question.

10 MR. GOCHENOUR: Your Honor, I  
11 will have to request time to do the  
12 research.

13 THE COURT: Well--

14 MR. GOCHENOUR: It may not take  
15 long. I'm sure it's in 19.2.

16 MR. WILKINS: I'm not going to  
17 object to 10 or 15 minutes, Your Honor.

18 THE COURT: We'll give you 15  
19 minutes. We'll take a 15 minute break.

20 MR. GOCHENOUR: Thank you, Your  
21 Honor.

22  
23 NOTE: A recess was taken, after  
24 which, the defendant being present, the  
25 following proceedings were had:

1 MR. GOCHENOUR: Your Honor, I'm  
2 not sure if I've got the answer of all  
3 answers. Apparently, we've determined  
4 that on this particular issue, we've got a  
5 division among circuits as far as whether  
6 or not this is a chain of custody problem.  
7 What I'd like to submit to the Court is--  
8 First of all I think the controlling  
9 statute, and I believe Mr. Wilkins will  
10 agree, is 19.2-187.01. You've got that  
11 out? All right.

12 Your Honor, secondly, I would  
13 submit the decision of Carl Kole versus  
14 Commonwealth of Virginia, which was a  
15 Court of Appeals decision out of this  
16 circuit. As I indicated, the facts of  
17 that case were such that there was a  
18 question of chain of custody. A bullet  
19 had been taken from an autopsy by a  
20 doctor, and then submitted to a lab for  
21 investigation. And the Court basically  
22 held, citing Pope versus Commonwealth,  
23 that all that is required in order to  
24 establish a chain of custody is that the  
25 Commonwealth's evidence afford reasonable

1 assurance that the exhibits at trial were  
2 in the same condition as when obtained.  
3 And I think with the stipulations and the  
4 certificates of analysis that we have  
5 together with 19.2-187.01, I think we do  
6 have that presumption of correctness. We  
7 have everything to a lab by stipulation.  
8 And then I think the statutory  
9 presumption--And there's no indications  
10 that there's anything unreliable about the  
11 hair samples. They were received in a  
12 sealed envelope. There is no indication  
13 of tampering. Nothing that would clue us  
14 in that there had been a problem.

15 I also have a copy or I have the  
16 Pope case if the Court would care to take  
17 a look at that.

18 MR. WILKINS: If I may respond,  
19 Your Honor. I think Mr. Gochenour is  
20 right. We're talking about this  
21 particular section of the code, which is  
22 relatively new. And what we've got  
23 is--We've got, apparently, and I've not  
24 seen the opinions, Your Honor. We've got  
25 three opinions that have been rendered by

1 circuit courts. Two have said that you've  
2 got to establish--re-establish, if you  
3 will, the chain between the first lab it  
4 went to and any other laboratory that it  
5 went to. One circuit has held, no, once  
6 it gets to the first laboratory, it can  
7 travel all around and come back to any  
8 number of laboratories. I do not have  
9 those opinions.

10 THE COURT: How did you find  
11 that out?

12 MR. WILKINS: They were  
13 referenced in the September 7 issue of  
14 Lawyers Weekly.

15 THE COURT: That's where I saw  
16 it.

17 MR. WILKINS: Yes, sir. And  
18 that's where I had seen it. And we  
19 scurried around and called the office.  
20 But there is that split.

21 THE COURT: Two to one?

22 MR. WILKINS: Two to one, Your  
23 Honor. Is it three to one or tied up?

24 THE COURT: I would rather make  
25 it three to one.

1 MR. GOCHENOUR: Your Honor, I  
2 have no information on those opinions in  
3 Lawyers Weekly. No argument has been  
4 presented supporting that position other  
5 than, apparently, there's a split. Other  
6 authority, Your Honor, this is a fax of  
7 the Attorney General's opinion where the  
8 specific question, I think, was well laid  
9 to the Attorney General; and the opinion  
10 just says that this code section we've  
11 been debating about does apply along with  
12 its statutory presumptions between  
13 laboratories. I think the way that the  
14 law has been presented required that the  
15 Court find it admissible.

16 MR. WILKINS: Your Honor, the  
17 statute itself says that there's a  
18 presumption from the time the materials  
19 are received by an authorized agent from  
20 such laboratory until such materials are  
21 released pursuant to such analysis for  
22 examination. There have been two analyses  
23 for examinations; not just one. And they  
24 did it two different places; this being a  
25 criminal statute, Your Honor, it applies

1                   civilly as well. But in this incidence,  
2                   it is a criminal statute, it should be  
3                   construed strictly against the  
4                   Commonwealth. I don't think there is any  
5                   question about that law. And reading  
6                   this, it is ambiguous reading the statute;  
7                   it is ambiguous.

8                   THE COURT: You have what  
9                   19.2-187?

10                  MR. WILKINS: .01.

11                  THE COURT: .01?

12                  MR. WILKINS: Yes, sir. And  
13                  that talks about matters--That talks about  
14                  the certificate of analysis as evidence of  
15                  chain of custody of materials described  
16                  therein. We stipulated that it got to the  
17                  first lab. But what the first lab did  
18                  with it then, is sent it somewhere else,  
19                  apparently. And that is an entirely  
20                  different chain. Because, when it got to  
21                  the first lab, it is opened up; and they  
22                  do their hocus pocus. And then it goes  
23                  some- where else. Now where else can they  
24                  send it? Could they send it  
25                  out-of-state? Could they have some other

1 private lab do it, or another public  
2 laboratory in a different state? Because  
3 if you read this loosely, that would be  
4 okay. But I think that from a criminal  
5 law standpoint, that is not a strict  
6 construction. And I think we are required  
7 to strict construction.

8 THE COURT: All right,  
9 gentlemen. Here's where we are. I recall  
10 my reaction when I read this article and  
11 considered that it imposed an almost  
12 impossible burden on the Commonwealth.  
13 And I just wondered how these problems  
14 were going to be handled. As Mr. Wilkins  
15 said, these things need to be interpreted  
16 strictly against the Commonwealth. I  
17 think for this Court to admit this, I  
18 would have to assume that there isn't any  
19 chain of custody issue between one  
20 laboratory and another. Absent some  
21 authority for that assumption, I don't  
22 think I shall do it. So we're going to  
23 rule that this is inadmissible.

24 MR. GOCHENOUR: Your Honor, can  
25 the Commonwealth seek a--

1 THE COURT: You certainly have a  
2 right to appeal.

3 MR. GOCHENOUR: I don't know  
4 whether I do or not. Your Honor, I can  
5 have the person from Richmond down here in  
6 about an hour-and-a-half, if the Court  
7 feels it's important. I would ask for a  
8 recess. That would not be the person that  
9 transported it. If the Court would feel--  
10 We would have a sealed envelope in  
11 Richmond and a receipt of a sealed  
12 envelope. If the Court still had  
13 questions, then that would be a waste of  
14 time.

15 THE COURT: Mailed from  
16 Richmond?

17 MR. GOCHENOUR: It was  
18 delivered by a truck with the police  
19 officer, I think.

20 MR. WILKINS: It was delivered  
21 by a person driving a truck, Your Honor.  
22 I think that is the chain.

23 THE COURT: Who can you have?

24 MR. GOCHENOUR: What's the  
25 name?

1 THE WITNESS: Lisa Schumaker.

2 MR. GOCHENOUR: She would  
3 identify the initials.

4 THE COURT: Is that a common  
5 carrier like the postal service or--

6 THE WITNESS: It's a Division of  
7 Forensic Science police officer that  
8 drives the security truck. It is in a  
9 locked box. It is put in a lockbox; and  
10 the driver doesn't have the key to that  
11 box.

12 THE COURT: All right, sir. You  
13 asked for an hour-and-a-half postponement?

14 MR. GOCHENOUR: Your Honor, if  
15 it makes a difference. If the Court feels  
16 that the ruling would be the same because  
17 we don't have the driver, I don't want to  
18 waste the Court's time.

19 THE COURT: It may make a  
20 difference. I'm not going to say it will;  
21 because I haven't heard what the man will  
22 say. But--

23 MR. WILKINS: Even if we took  
24 what Mr. Gist says, Your Honor, it is  
25 still out of whoever signed it's custody

1                   into somebody else's and delivered. And I  
2                   think then you'd need that person here. I  
3                   mean, I don't feel--

4                   THE COURT: I can liken it to  
5                   the presumption when you put something in  
6                   the post office, you can make that same  
7                   argument. I don't think that--

8                   MR. WILKINS: But that's why--  
9                   that's why Mr. Gochenour had Mr.  
10                  Stanbridge here today to say he took it  
11                  from the Westmoreland locker to Richmond.  
12                  And I stipulated that; but without Mr.  
13                  Stanbridge that's--They've got to prove  
14                  that.

15                  THE COURT: I don't think we're  
16                  going to have one more link to the chain.  
17                  This is the man, I assume, taken to Mr.  
18                  Stanbridge?

19                  MR. WILKINS: Pardon me? Well,  
20                  no. Mr. Stanbridge took it from Mr.  
21                  Yateman. That would be the testimony.  
22                  Took it from Mr. Yateman and delivered it  
23                  to the lab--That's the--

24                  MR. GOCHENOUR: The person at  
25                  the lab who then took this material, put

1           it in that envelope, sealed it, and placed  
2           it with the carrier to take it down to our  
3           witness.

4                   MR. WILKINS:   Isn't that what  
5           you're missing, is the carrier?

6                   THE COURT:   Do you want some  
7           time to do that?  I'm not going to say  
8           what the Court's ruling would be.  It  
9           would seem to me that this is my  
10          preliminary review of the matter.  If you  
11          have a witness, you have got to agree that  
12          the chain is satisfactory.  The witness  
13          took it from that point and delivered it  
14          to a carrier who transported it to a lab  
15          in Roanoke.  It would seem to me that that  
16          would be satisfactory.  I would say that  
17          that is similar to mailing it.

18                   MR. WILKINS:   Let me think about  
19          this for two minutes, Judge, and maybe we  
20          can, in preserving my objection save that  
21          hour-and-a-half because I might be able to  
22          stipulate that.  Can I get a minute or  
23          two?

24                   THE COURT:   Yes.  Recess.  
25

1                   NOTE: A recess was taken, after  
2 which, the defendant being present, the  
3 following proceedings were had:  
4

5                   THE COURT: Where are you all,  
6 now?

7                   MR. WILKINS: Your Honor, my  
8 secretary called Lawyers Weekly. The  
9 opinions are unpublished as I understand.

10                  THE COURT: They are  
11 unpublished?

12                  MR. WILKINS: Unpublished. But  
13 she called both lawyers and reached her.  
14 And the facts are just a little bit  
15 different in that case. This is a case  
16 where the Court ruled that the chain was,  
17 in fact, broken. It had been proven. And  
18 in that case some evidence went to the lab  
19 in Norfolk and was then sent to northern  
20 Virginia; and the report came out of the  
21 Norfolk office. And the Court held that  
22 this was not--They needed to prove that  
23 chain. She wasn't able to reach the other  
24 lawyer; but that was just the nature of  
25 full disclosure, Your Honor. What I'm

1 prepared to do is to stipulate that Ms.  
2 Schumaker, who authored the July 6  
3 analysis that you have in evidence,  
4 initialed--

5 THE COURT: I don't have it,  
6 yet.

7 MR. WILKINS: Yes, sir. It was  
8 Defendant's Exhibit No. 1.

9 THE COURT: Oh, I see.

10 MR. WILKINS: That's the  
11 certificate that deals with the portion of  
12 the samples that consisted of blood and  
13 saliva and swabs.

14 THE COURT: Item four?

15 MR. WILKINS: Well it--No. Only  
16 blood and saliva of item four. Mr. Gist  
17 is here to testify about the hair samples.  
18 So, I am prepared to stipulate, Your  
19 Honor, that Ms. Schumaker signed that  
20 package that you have in front of you and  
21 that it arrived at Mr. Gist's office. But  
22 I want to preserve my objection as to how  
23 it got there. And I think what the Court  
24 said was, that if Ms. Schumaker came to  
25 Richmond that you would accept that since

1 she signed that and it got to Roanoke that  
2 you'd accept that; and you would not  
3 require the driver. I think that's where  
4 the chain was broken. And I'd like to  
5 preserve that objection.

6 THE COURT: Mr. Gist said that  
7 the driver was an employee, an agent, an  
8 officer of the Consolidated Laboratory.

9 MR. WILKINS: I don't know what  
10 officer means. But I will stipulate that  
11 the driver was an employee.

12 THE WITNESS: He's a sworn  
13 police officer of the Division of Forensic  
14 Science.

15 MR. WILKINS: Well, I don't know  
16 what that means.

17 THE COURT: It's not necessary  
18 to get Ms. Schumaker down here.

19 MR. WILKINS: I am not going to  
20 ask--

21 THE COURT: You have your point.  
22 Subject to Mr. Gist's testimony we will--

23 MR. WILKINS: As long as the  
24 Court understands that my objection is  
25 preserved because of the transportation.

1 THE COURT: Well, just to be  
2 clear, so we know where we're starting  
3 from--Mr. Gist, do you know who  
4 transported the samples to your office in  
5 Roanoke from the office in Richmond?

6 THE WITNESS: No. There are  
7 probably three police officers who would  
8 rotate in driving the samples out. And I  
9 do not know the names of any of those  
10 individuals.

11 THE COURT: Are those officers  
12 the only persons who bring these samples  
13 up to you?

14 THE WITNESS: Yes.

15 THE COURT: And is it in a  
16 truck?

17 THE WITNESS: Yes.

18 THE COURT: All right, sir.

19 BY MR. GOCHENOUR: (Continuing)

20 Q Mr. Gist--And do I understand  
21 that the actual samples are in a locked box within  
22 that vehicle?

23 A That's right.

24 Q All right. We can pick up then.  
25 The items in this package--This package was

1 delivered to you in this condition except for the  
2 seal that you placed on it; is that right?

3 A That's right.

4 MR. GOCHENOUR: Okay. Your  
5 Honor, I believe I moved for admission of  
6 this when we stopped off. These are the  
7 actual hair samples and everything. I  
8 don't know if we have to open it or  
9 anything. The Court has--That's the  
10 actual evidence that coordinates with  
11 the--

12 MR. WILKINS: I'd like to see  
13 it.

14 THE COURT: All right, sir.  
15 Subject to his objection as to the chain  
16 of custody, we will admit it into  
17 evidence.

18  
19 NOTE: The above-referred-to  
20 hair samples was marked and filed as  
21 Commonwealth's Exhibit No. 1.

22  
23 BY MR. GOCHENOUR: (Continuing)

24 Q You received these items, and  
25 what did do you with them, sir?

1           A           I made comparisons of the hairs  
2 that were evaluated from microscopic comparison.  
3 The evidence contained therein consisted of head  
4 hair sample, pubic hair sample, and pubic combings,  
5 reportedly, from [REDACTED]. It contained  
6 "hairs and/or fibers" from shorts, reportedly, from  
7 [REDACTED] and head hair samples and pubic  
8 hair samples, reportedly, from the defendant.

9           What I did was examine the pubic combings  
10 to determine if there were any hairs present and  
11 made comparisons. And in my findings, there, I  
12 found characteristically Negroid hairs and  
13 characteristically Negroid hair fragments, which  
14 were all of no value for meaningful comparison  
15 purposes, in the pubic combing, reportedly, from  
16 [REDACTED].

17           Q           So, we found nothing with the  
18 pubic hair combings; is that right?

19           A           Nothing of value.

20           Q           All right.

21           A           I found present in the "hairs  
22 and/or fibers" from the shorts, reportedly, from  
23 [REDACTED], a hair and a hair fragment, which  
24 were consistent--Each one was consistent with the  
25 pubic hair samples, reportedly, from the defendant.

1           These hairs could--hair and hair  
2 fragment--could have originated from the defendant.  
3 I would point out that it's not possible to  
4 pinpoint the origin of a hair and to say that this  
5 hair came from a particular person. But based upon  
6 my examination, I'm able to say that the hairs were  
7 consistent in visual and microscopic  
8 characteristics; and it would be unlikely that  
9 another individual would have hair that would be  
10 consistent. But, again, I cannot pinpoint the  
11 source of a hair. It is not possible.

12           Q           Is this the original report?

13           A           Yes, it is.

14                   MR. GOCHENOUR: I would like to  
15 introduce this into evidence. Do you have  
16 a problem, Mr. Wilkins?

17                   MR. WILKINS: I've seen it, Your  
18 Honor; and I objected only on that basis  
19 of my formal objection.

20                   THE COURT: All right, sir.

21

22                   NOTE: The above-referred-to  
23 document was marked and filed as  
24 Commonwealth's Exhibit No. 2.

25

1 BY MR. GOCHENOUR: (Continuing)

2 Q The hair fragment and hair that  
3 you found on [REDACTED]--Or, reportedly, came from  
4 [REDACTED] shorts, those are consistent with the  
5 ones reportedly from the defendant; correct?

6 A That's correct.

7 Q And those were pubic hairs as  
8 opposed to any other body hair?

9 A That's correct.

10 Q And they were Negroid hairs?

11 A That's correct.

12 Q And they were not [REDACTED]  
13 pubic hairs?

14 A That is also correct. They were  
15 not consistent with hers and did not originate from  
16 her.

17 MR. GOCHENOUR: That's all my  
18 questions. Thank you.

19

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22

CROSS-EXAMINATION.

23 BY MR. WILKINS:

24 Q But you can't tell whether they  
25 are male or female?

1                   A            No, sir. I can not.

2                   Q            And there were combings of

3                   [REDACTED] pubic hair; is that right?

4                   A            That's that paper towel before

5                   you, there.

6                   Q            I'm sorry?

7                   A            That white piece of paper.

8                   Q            This?

9                   A            That.

10                  Q            You examined these and there

11                  was--There was nothing foreign?

12                  A            I found that there was

13                  characteristically Negroid hairs and

14                  characteristically Negroid hair fragments, which

15                  were of no value. They were present; but they

16                  contained too few characteristics to associate with

17                  anyone.

18                               MR. WILKINS: Thank you, sir.

19                               No further questions.

20                               MR. GOCHENOUR: Nothing else.

21                               THE COURT: You say it is

22                               unlikely that this hair would be the hair

23                               of any other person?

24                               THE WITNESS: It will be my

25                               opinion based upon some 16 years of hair

1 examination. In other words, in comparing  
2 suspect/victim hairs, as I routinely do, I  
3 seldom encounter two samples that come to  
4 me simultaneously that I cannot  
5 differentiate. But it has happened in my  
6 career. But it hasn't happened often.  
7 It's a very seldom situation.

8 THE COURT: Thank you, Mr. Gist.

9 THE WITNESS: May I be excused?

10 MR. WILKINS: One other  
11 question.

12

13

14

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RE CROSS-EXAMINATION

16 BY MR. WILKINS:

17 Q There's no percentage that you  
18 can put on this--80 percent, 60 percent, 90  
19 percent?

20 A No, sir. No, sir. There's no  
21 way to put a number on it because of the variation  
22 in a single hair, much less between individuals'  
23 hairs from the same person's pubic area or head  
24 area.

25 MR. WILKINS: I don't needs this

witness any more.

MR. GOCHENOUR: Nothing else.

THE COURT: Thank you, sir.

You're excused.

---

WITNESS STOOD ASIDE

THE COURT: We have the analysis by Mr. Gist, which I've mark as Commonwealth's Exhibit No. 1. This will be No. 2.

MR. GOCHENOUR: Okay. And we also have the Defendant's Exhibit No. 1, which was the first certificate of analysis.

The Commonwealth rests, Your

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Honor.

MR. WILKINS: Your Honor, I would like to have a few minutes with my client, if I may.

THE COURT: All right, sir.

MR. WILKINS: I don't know if the Court has anything else to take up; but I would like 15 minutes or so in the conference room.

NOTE: A recess was taken, after which the defendant being present, the following proceedings were had.

THE COURT: All right, gentlemen.

MR. WILKINS: Your Honor, the defense at this time is going to call Mr. Jones, the defendant.

\* \* \* \*

VIRGINIA: IN THE CIRCUIT COURT OF WESTMORELAND COUNTY

COMMONWEALTH OF VIRGINIA

VS.

FELONY - RAPE

LLOYD E. JONES

I, Doris R. Moss, Clerk of the Circuit Court of Westmoreland County, Virginia, do hereby certify that pursuant to Rule 5:14, Commonwealth's Exhibit No. 1 to-wit:

No. 1 Envelope of Hair Samples

has not been transmitted with the record in the above case.

*Doris R. Moss*  
Doris R. Moss, Clerk



Commonwealth of Virginia  
Department of General Services  
DIVISION OF FORENSIC SCIENCE

ORIGINAL

CERTIFICATE OF ANALYSIS  
September 22, 1992

Western Laboratory  
920 S. Jefferson Street  
Room # 219  
Roanoke, Virginia 24016

TO: WESTMORELAND COUNTY SHERIFFS OFFICE  
SGT A M YEATMAN JR  
P O BOX 305  
MONTROSS VA 22520

Tel. No.: (703) 857-7192  
Fax: (703) 857-7399  
TDD/Voice (804) 786-6152

*September 25-1992*  
Filed in the Clerk's Office of the Circuit  
Court of Westmoreland County.  
*Betty M. ... Clerk*

Your Case #: 921102.A22

FS Lab #: C92-03982

Victim(s): [REDACTED]

Suspect(s): JONES, Lloyd E.

Examiner: Elmer Gist, Jr.

Evidence Submitted By: D. C. Standbridge

Date Received: 04/30/92

- Item 1 Head hair sample, pubic hair sample and pubic combings from [REDACTED]
- Item 3 "Hairs and/or fibers" from shorts of [REDACTED]
- Item 4 Head hair sample and pubic hair sample from Lloyd E. Jones

RESULTS:

Item 1 Characteristically Negroid hairs and characteristically Negroid hair fragments, which were all of no value for meaningful comparison purposes, were present in the "hairs and/or fibers" from the pubic combings from [REDACTED]

Item 3 A hair and a hair fragment, which were consistent with the pubic hair sample from Lloyd E. Jones (item 4) were present in the "hairs and/or fibers" from the shorts of [REDACTED]. The hair and the hair fragment could have originated from Lloyd E. Jones.

It is pointed out that hairs do not possess a sufficient number of unique individual microscopic characteristics to be positively identified as having originated from a particular person to the exclusion of all others.

The evidence is being returned to the Central Laboratory where it will be available for personal pick up after you have received the results of all requested examinations.

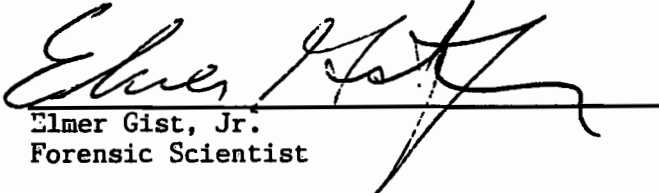
*Commonwealth Exh No 2*  
*10-1-92*  
*DSS Judge*

Westmoreland County Sheriff's Office  
Your Case # 921102.A22  
FS Lab C92-03982  
September 22, 1992

**ATTEST:**

I certify that I performed the above analysis or examination as an employee of the Division of Forensic Science and that the above is an accurate record of the results of that analysis or examination.

mdl

  
Elmer Gist, Jr.  
Forensic Scientist

c: Central Laboratory