

4-98-00179-CR

CAUSE NO. F97-00731-KS

COURT OF APPEAL NO. 04-998-00179-CR

FILED
IN THE COURT OF APPEALS
AT SAN ANTONIO, TEXAS

98 JUN 24 PM 1:37

Phillips

THE STATE OF TEXAS) IN THE 282ND JUDICIAL DISTRICT
VS.) COURT OF
ENTRE NAX KARAGE) DALLAS COUNTY, TEXAS

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REPORTER'S RECORD

CASE IN CHIEF

VOL. 2 of 3

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ORIGINAL

BE IT REMEMBERED THAT on the 13th and 14th days of
November, 1997, the above styled and numbered cause came on for
hearing before the HONORABLE KAREN J. GREENE, in the 282nd
Judicial District Court, at the Frank Crowley Courts Building,
Dallas, Texas, whereupon the following proceedings were had:

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after which the following proceedings were
had in open court:)

(The witness was sworn.)

THE COURT: All right. You may proceed.

MR. D'AMORE: Thank you.

CAROLYN VAN WINKLE,

The witness hereinbefore named, having been duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, testified on her oath as follows:

DIRECT EXAMINATION

BY MR. D'AMORE:

Q. Would you state your name for the record, please.

A. Carolyn Van Winkle.

Q. And, Ms. Van Winkle, would you state -- where do you work? I'm sorry.

A. I work here in Dallas at the Southwestern Institute of Forensic Sciences.

Q. And what do you do there?

A. I work specifically in the DNA laboratory.

Q. All right. And would you state for the record your qualifications to work there in that capacity.

A. I have a Bachelor of Science Degree. I'm a registered medical technologist by the American Society of Clinical Pathologists. I'm a registered specialist in blood

1 bank technology by the American Association of Blood Banks.
2 I've also had training specifically in the area of forensic DNA
3 methods at the FBI Academy at Quantico, Virginia, at Cellmark,
4 one of the first laboratories to do DNA in this country.

5 Also, I worked on standards used in laboratories
6 throughout the country at the National Institute of Standards
7 and Technology in Gaithersburg, Maryland.

8 THE REPORTER: In where?

9 THE WITNESS: Gaithersburg, Maryland.

10 Q. (By Mr. D'Amore) How long have you worked within
11 the field as you do now?

12 A. Specifically in DNA since I begun approximately
13 '89.

14 Q. Okay. And before that, you've been within the
15 field of serology or forensics?

16 A. That's correct, since 1986.

17 Q. Okay. I'd like to direct your attention with
18 regards to a person by the name of Entre Karage, and I'll ask
19 you, did you participate or have some -- present when some
20 blood was drawn?

21 A. Yes, I was.

22 Q. Do you see him in court today?

23 A. Yes, I do.

24 Q. Would you point him out for the judge, please?

25 A. He's in the light blue shirt over there

1 (indicating) --

2 MR. D'AMORE: All right. Your Honor, let --

3 A. -- to my left.

4 MR. D'AMORE: -- the record reflect the witness
5 has identified the defendant in open court.

6 Q. (By Mr. D'Amore) When was the blood drawn from
7 the defendant?

8 A. It was drawn on October 27th of '94.

9 Q. All right. With regards to that, were you asked
10 to do some comparisons with the defendant's blood to other
11 pieces of evidence submitted to your lab from the Dallas Police
12 Department?

13 A. Yes, I was.

14 Q. All of those reports and findings that either you
15 or another serologist, Catherine Long, did, are they put into
16 what they commonly call a lab report?

17 A. They are.

18 MR. D'AMORE: All right. May I approach?

19 THE COURT: Yes.

20 Q. (By Mr. D'Amore) Let me show you two exhibits,
21 State's Exhibit 4 and 5. If you would look at those and decide
22 whether they're exact copies of the two originals.

23 A. Other than the copy stamp and the exhibit
24 stickers, they are.

25 Q. Okay. State's Exhibit 4 is one done by yourself,

1 correct?

2 A. That's correct.

3 Q. State's Exhibit 5 is one done by another
4 serologist or forensic serologist, Catherine Long?

5 A. That's correct.

6 Q. Have you reviewed both documents yourself?

7 A. I have.

8 MR. D'AMORE: All right. We would offer State's
9 Exhibit 4 and 5.

10 MR. HENDRIK: No objection.

11 THE COURT: Admitted.

12 Q. (By Mr. D'Amore) Let's use State's Exhibit 4
13 first, which you did yourself.

14 Specifically would you tell the judge when you received
15 the defendant's blood, what you compared that to for purposes
16 of when you -- you began your DNA. What other sample were you
17 referring to?

18 A. The samples that that was compared to was samples
19 taken from the autopsy from the vaginal swab on the victim.
20 And also from a -- and anal swab from the victim. And also a
21 carpet sample.

22 Q. Okay. Taken from a vehicle to your knowledge?

23 A. That's correct.

24 Q. Okay. With regards to the vaginal swabs from the
25 autopsy, did they come back to compare to the defendant?

1 A. No, they did not.

2 Q. When we talk about the carpet sample, in other
3 words, the blood that was on the carpet, the piece of carpet
4 from the vehicle, what were the results of that comparison?

5 A. DNA was extracted from the carpet, as was -- as it
6 was from the autopsy blood and the blood of Mr. Karage, and the
7 blood on the carpet, the banding pattern, the DNA banding
8 pattern matched the DNA banding pattern obtained from the
9 autopsy blood.

10 Q. Okay. So basically what you're able to tell us or
11 what you put in your report when you -- when you did the
12 comparison, was that the blood on the carpet, that was the
13 blood of the blood from the victim in the autopsy?

14 A. A match is not a hundred percent --

15 Q. Right?

16 A. -- but yes, a high degree of likelihood that it
17 was --

18 Q. Okay.

19 A. -- her blood, yes.

20 Q. Okay. And what would the statistical number be
21 that you were able to come up?

22 A. We compare that DNA banding pattern as far as how
23 frequent or common it is across the three races of this area,
24 and that frequency is one in seven million in the Caucasian
25 population. One in 3.5 million in the black population. And

1 one in 13 million in the Hispanic population.

2 Q. An Asian individual would fall into what category,
3 ma'am?

4 A. It would be a separate population. I don't have a
5 database of this local area for Asians, but I do have a
6 population number -- database at the office.

7 Q. Okay. State's Exhibit Number 5, I believe what
8 Ms. Long did, it's in evidence. The judge will be able to look
9 at it. And there were some pieces of evidence submitted to you
10 specifically or to our lab that I want to ask you about.

11 Lab number, or the lab -- the exhibit numbers would be
12 17, 18, 19, 20, 21 and 22, which is a baseball cap, a pair of
13 socks, boots, sweater, pants and jacket.

14 What was (sic) the results of testing those items?

15 A. On items 17, 18, 19 and 20, as the report
16 reflects, there was a presumptive test that was positive for
17 blood, although no distinct stains were visualized.

18 Also the same on item 22, the jacket.

19 Q. Okay. Twenty-one, which was the pants, blood was
20 not detected as indicated in the report?

21 A. Cut-offs, yes --

22 Q. Okay.

23 A. -- that's correct.

24 Q. Now, when -- when your lab says presumptive for
25 blood or positive -- presumptive test for blood was positive,

1 and that would have been on those items that you described, the
2 baseball cap, the pair of socks, the boots, the sweater, and
3 the jacket, what does that mean?

4 A. The text testing that we do for blood, is first we
5 visually look for stains. If stains are not detected, or even
6 if they are detected, they're tested with our chemical reagent
7 that will detect a very minute quantity of blood. It will
8 detect a positive reaction, even though a stain may not be
9 visible.

10 Q. Can you say whether it was human blood or animal
11 blood or anything else?

12 A. No, given the fact that we don't have a visible
13 stain, there's no further testing that can be done.

14 Q. Other than a presumptive for some type of blood?

15 A. It reacts as blood would react. We cannot say for
16 sure -- for certainty that it is blood.

17 Q. And I know we've kind of jumped to the end of the
18 results when we talked about the DNA, but just so the record is
19 clear, would you describe DNA and the testing you did briefly
20 as possible so the record will reflect what you did and what it
21 is.

22 A. The type of testing that was done on the carpet
23 sample that was compared to autopsy blood, was the most
24 discriminating type of testing, RFLP testing.

25 THE REPORTER: The what?

1 THE WITNESS: RFLP testing.

2 A. DNA itself is found in all neucleated cells and
3 other than identical twins, no two individuals have the same
4 DNA. That's the basis of the use of DNA for forensic evidence.

5 Q. Was anyone else compared to the -- to the -- the
6 samples from the autopsy regarding the vaginal and the anal?

7 A. Yes, I had another blood sample.

8 Q. Who was that from?

9 A. Pro Sok.

10 Q. Okay. P-r-o, S-o-k (spelling)?

11 A. That's correct.

12 Q. All right. And the results of that comparison,
13 ma'am, could you tell the judge?

14 A. Again, from the vaginal swab and the anal swab,
15 the non-victim DNA obtained did not originate from Pro Sok.

16 Q. You were able to exclude him?

17 A. That's correct.

18 MR. D'AMORE: Okay. Thank you.

19 I believe that's all I have.

20

21 CROSS-EXAMINATION

22 BY MR. HENDRIK:

23 Q. Can you tell -- so the -- the -- the semen or
24 sperm that was found in the anal swab and the vaginal swab of
25 the victim, that sperm did not come from Mr. Karage; is that

1 correct?

2 A. That's correct.

3 Q. And it did not come from the -- the man named Pro
4 Sok either?

5 A. That's correct.

6 Q. It came from some other person?

7 A. That's correct.

8 Q. And were the DNA -- it may be -- you may have some
9 odds in trying to show that something definitely comes from
10 a -- from a certain person, it never can be a hundred percent,
11 it can be several millions to one perhaps, but not actually a
12 hundred percent. When -- when you -- the DNA tests that show
13 that some -- that something did not come from somebody, that is
14 a hundred percent accurate; is that correct?

15 A. That is an absolute exclusion, that's correct.

16 Q. Okay. The DNA sample that you obtained from the
17 vagina -- from the vaginal and the -- the -- and the anal swab,
18 let me ask you, were they -- were -- was the DNA the same from
19 both those two places, or were they different from each place?

20 A. There was only one locust that was tested on those
21 samples, and the type that was obtained was identical.

22 Q. So looking at the report, it looks like only the
23 anal swab was actually tested for -- for DNA?

24 A. No, sir.

25 Q. The vaginal swab was not tested?

1 A. No, sir, both of them were tested, and the one
2 test that both -- that was done on both of those samples gave
3 the same type, again, not matching either Pro Sok or Karage.

4 Q. That's right, but did -- from your tests, from the
5 tests that you ran, do you know if two different people
6 provided the -- the sperm that was found in the -- in each
7 location, or was it the same person?

8 A. On the -- the -- both the samples, only the
9 vaginal swab had an RFLP analysis done, and on that sample
10 there was no indication there was but one additional -- one
11 sperm donor.

12 Q. So you have only one source for the sperm that was
13 found in both locations?

14 A. It's certainly consistent with that, yes.

15 Q. Okay. All right.

16 Could you tell the -- the race of the person who
17 provided that -- that sample? Is that possible from --

18 A. No, it is not.

19 Q. It's not possible.

20 Okay. Now, you mentioned this presumptive test for
21 blood on some items that the prosecutor asked you about.

22 Would you agree with the statement that the practice of
23 reporting the presence of blood on the basis of a presumptive
24 test reaction without species confirmation, is at best a
25 dubious practice frowned on by the serological community

1 serological community?

2 A. Right. That's the reason it's reported as only
3 presumptive.

4 Q. And just so there's no -- just so it's clear,
5 there's -- you cannot even actually say that -- that blood is
6 present when you only have a presumptive test; is that correct?

7 A. That's correct.

8 Q. So it may be blood or it might be something else?

9 A. That's correct.

10 Q. And, of course, as you've indicated, you don't
11 know whether this was -- this sample was human blood or animal
12 blood or any -- or anything of that nature?

13 A. That's correct.

14 Q. And you certainly don't know whether that blood
15 came from the victim in this -- in this -- this crime?

16 A. That's correct.

17 MR. HENDRIK: Pass the witness.

18

19 REDIRECT EXAMINATION

20 BY MR. D'AMORE:

21 Q. One last question, ma'am.

22 If it wasn't blood, what would be some other things
23 that it could be?

24 A. There are other -- the testing itself, the blood
25 testing reaction itself is simply an oxidation reduction type

1 of reaction. Sometimes rust may cause that to be positive or
2 other peroxidasis, perhaps, vegetable-type products.

3 Q. Okay. It was --

4 MR. D'AMORE: Okay. That's fine. That's all I
5 have.

6 MR. HENDRIK: Nothing further.

7 THE COURT: All right. Thank you. You may step
8 down.

9 MR. D'AMORE: May she be excused to go back to the
10 lab?

11 MR. HENDRIK: Yes, Your Honor.

12 THE COURT: Thank you. You may be excused.

13 (The witness was retired from the courtroom,
14 after which the following proceedings were
15 had in open court:)

16 (The witness was returned to the courtroom,
17 after which the following proceedings were
18 had in open court:)

19 THE COURT: You may proceed.

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25 (No omissions this page.)