

VOLUME THREE OF FOUR

IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

**FILED**  
MAR 16 1988  
PEGGY J. STEVENS McGRAW, CLERK  
WESTERN DISTRICT

STATE OF MISSOURI, )  
)  
Respondent, )  
)  
vs. )  
)  
ERIC MASSEY, )  
)  
Appellant. )

No. WD 39860

IN THE CIRCUIT COURT OF MISSOURI  
BUCHANAN COUNTY, DIVISION NO. 3  
HONORABLE FRANK D. CONNETT, JR.

STATE OF MISSOURI, )  
)  
Plaintiff, )  
)  
vs. )  
)  
ERIC MASSEY, )  
)  
Defendant, )

Case No. CR386-25FX

TRANSCRIPT ON APPEAL

MRS. CAROL BARNETT  
Assistant Prosecuting Attorney  
Buchanan County Courthouse  
St. Joseph, Missouri  
Attorney for Petitioner;

MR. DWIGHT SCROGGINS  
Assistant Public Defender  
Fifth Judicial Circuit  
St. Joseph, Missouri  
Attorney for Respondent.

1 AFTERNOON SESSION

2

3 MARION McMILLIAN, having been first duly sworn, testified:

4 DIRECT EXAMINATION BY MRS. BARNETT:

5 Q State your name, please?

6 A Marion Davis McMillian.

7 Q And your occupation, sir?

8 A I'm a police officer.

9 Q Where?

10 A Kansas City, Missouri, Police Department.

11 Q Where specifically do you work within the Kansas City,  
12 Missouri, Police Department?

13 A I'm assigned to the regional crime laboratory as a forensic  
14 firearms and toolmark examiner.

15 Q Forensic firearms and toolmark examiner?

16 A Yes.

17 Q Have you had any training for that position?

18 A Yes.

19 Q Could you tell the Court and the jury what that has been?

20 A First off, my educational background, I have a masters de-  
21 gree in criminal justice administration. There's no actual,  
22 formal school that teaches the profession of firearms and  
23 toolmark examination. The profession is learned through  
24 on-the-job training. However, there is certain courses  
25 offered by both local, state and federal agencies.

1 MR. SCROGGINS: Your Honor, I would object to the  
2 narrative. If he has attended certain things, let him  
3 say what he's attended. If he's taken any classes,  
4 let him state that he's taken them, but the narrative  
5 form, the explanation as to why he took them or didn't  
6 take other things is totally irrelevant and immaterial.

7 THE COURT: Overruled.

8 Q Please continue.

9 A A number of these courses I have attended, but basically  
10 it's working with others in the field that are already  
11 established through their own on-the-job training, attend-  
12 ing workshops, touring manufacturing plants, ammunition  
13 plants, manufacturing firearms, and so forth.

14 Q Have you had occasion in the past to qualify as an expert  
15 in the area in which you're working now?

16 A Yes, I have.

17 Q In court?

18 A Yes.

19 Q Approximately how many occasions?

20 A It would be a guess, but 30 times.

21 Q Can you state for the Court and the jury a brief summary of  
22 the types of training workshops you have attended, please?

23 A It started at the federal level. At the F.B.I. Academy at  
24 Quantico, Virginia, I have attended three courses dealing  
25 with identification. On the state level--

1 MR. SCROGGINS: Your Honor, what if I stipulate  
2 to this man, that he's qualified to testify, without  
3 going through the rest of this.

4 THE COURT: All right.

5 MRS. BARNETT: Thank you; I appreciate that.

6 Q Have you had occasion to do any work at the regional crime  
7 lab on a case for the St. Joseph Police Department?

8 A Yes.

9 Q Involving Eric Massey?

10 A Yes.

11 Q In the course of your work, have you had occasion to examine  
12 what's been marked and admitted into evidence as State's  
13 Exhibit No. 29-A?

14 A Yes; this is one of the items that was submitted to the lab  
15 through the St. Joseph P.D. for examination, which I did  
16 examine.

17 Q What was the extent of your examination on that item?

18 MR. SCROGGINS: May we approach, your Honor?

19 THE COURT: Yes.

20  
21 (The following proceedings were had  
22 outside the hearing of the jury:)

23 MR. SCROGGINS: This is premised upon an earlier  
24 thing that we discussed, and I don't know if it was  
25 finally decided, but it needs to be clarified now be-

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fore we go any further. This is the gentleman who lifted the latent fingerprint from this object, and it--

THE COURT: Turned out later to be--

MR. SCROGGINS: To be nothing.

MRS. BARNETT: I'm not going into that at all.

MR. SCROGGINS: Well, this type of question is going to bring that out, what type of investigation, or what type of--

THE COURT: What is it you want this man to testify to?

MRS. BARNETT: He's going to testify as to his measurement on the blade of the screwdriver, and his comparison of that measurement with the holes that are in the housecoat. The testimony will be that the holes in the housecoat, the size of them, and the measurement of the width of the blade, makes it his conclusion that the screwdriver blade likely caused them.

THE COURT: Okay.

MR. SCROGGINS: If we're talking about simply-- With this witness, if the only thing we're talking about is the width of the blade and whether or not that is consistent or inconsistent with the holes that were made in the material, I would probably allow Mrs.



1           examining Exhibit 29-A, and you measured something to be  
2           two hundred thousandths, that is what part of Exhibit 29-A?  
3           What specifically did you measure?

4   A       The tip; the width of the blade.

5   Q       We're talking about the tip; the width of the tip of the  
6           blade on the screwdriver?

7   A       Yes.

8   Q       Did you have occasion in the course of your investigation  
9           to examine what's been marked now as State's Exhibit 4-B,  
10          which I'm handing to you now?

11  A       Yes, I did; I examined this item.

12  Q       How is it that you can recall that now, sir?

13  A       I marked the item during the examination with my initials  
14          and the date.

15  Q       Following your examination of that item, and your measure-  
16          ment of the width of the tip of the blade on the screw-  
17          driver, were you able to reach any conclusions regarding  
18          those two articles of evidence?

19  A       Yes, I was.

20  Q       Could you state, please, what that was?

21  A       The holes found in the garment are consistent, as far as  
22          size is concerned, with the blade tip of this screwdriver.

23  Q       Did you actually measure portions of the holes, or the  
24          holes themselves, on the garment?

25  A       Yes, I did.

1 Q What was that measurement?

2 A They were at least two hundred and ten thousandths and  
3 larger.

4 MRS. BARNETT: Your witness.

5

6 CROSS-EXAMINATION BY MR. SCROGGINS:

7 Q Mr. McMillian, you said they're consistent. Would they be  
8 consistent with any blunt instrument that would be approxi-  
9 mately the same size as that screwdriver?

10 A Yes.

11 Q You are not testifying that that screwdriver is the instru-  
12 ment that made those holes?

13 A No; I cannot do that. I cannot say that.

14 Q And if I understand correctly what you just testified to,  
15 the analysis that you did on the robe, the reason you are  
16 stating they are consistent is simply because the holes  
17 are larger in size than the tip of the screwdriver that  
18 you examined, is that correct?

19 A No; they are consistent as far as size. You would expect  
20 them to be larger; therefore, that's why I can say they are  
21 consistent.

22 Q Okay; that was the point I'm asking. They have to be  
23 larger than the instrument that's supposed to have made the  
24 holes?

25 A They have to be larger, yes.

1 Q And they are?

2 A Yes.

3 Q And beyond that, you can't say anything about them, can  
4 you, in reference to this item that you examined?

5 A I can state that I can eliminate many types of instruments  
6 from making them. It has to be consistent with this type  
7 of tool.

8 Q Blunt?

9 A Right.

10 Q Basically, is what you're saying, isn't it?

11 A It's size, and blunt, yes.

12 Q Blunt and size, and that's the comparison that you're  
13 making?

14 A Yes, sir.

15 Q And that's the only comparison that you're making?

16 A Yes.

17 Q And the only thing that you're stating is that they are  
18 not inconsistent, the holes in the robe?

19 A I'm saying they are consistent with the screwdriver.

20 Q They are not inconsistent, are they?

21 A No.

22 MR. SCROGGINS: No further questions.

23

24 REDIRECT EXAMINATION BY MRS. BARNETT:

25 Q Mr. McMillian, in the course of your experience in your

1 field of expertise, can you think of any comparison work  
2 where you have been able--

3 MR. SCROGGINS: Objection; irrelevant.

4 THE COURT: Wait a minute, until I hear your  
5 question.

6 Q In the course of your work in your field of expertise, have  
7 you ever been able to make comparisons where you--

8 MR. SCROGGINS: Objection to anything that this  
9 man has ever been able to do in other cases.

10 THE COURT: That objection will be sustained.

11 MRS. BARNETT: No further questions.

12 (Witness excused.)  
13

14 MRS. BARNETT: I call August Nilges.

15 (The following proceedings were had  
16 outside the hearing of the jury:)  
17

18 MR. SCROGGINS: This is, as I understand it, the  
19 fingerprint expert. There's been no testimony of any  
20 fingerprints being lifted from anything. Therefore,  
21 if he's allowed to get on the stand and testify about  
22 any examinations he conducted, there has to be some  
23 foundation laid.

24 THE COURT: I assume that, too. I assume that  
25 he's going to say he lifted a print from something or

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the other.

MRS. BARNETT: He received a card from the St. Joseph Police Department, a latent lift card. He examined it and determined that the lift themselves were of possible value.

THE COURT: Well, where does that show up?

MR. SCROGGINS: There's nothing; there's been no testimony. This gentleman cannot testify to that, because it's irrelevant and immaterial. There's been no foundation.

THE COURT: I'm not worried about the irrelevancy at this point. I am worried about the fact that you say he's going to testify about some latent print that somebody gave him?

MRS. BARNETT: That's right. He received them from the St. Joseph Police Department.

THE COURT: What exhibit number are these? Who picked them off and gave them to him? Where did they come from?

MRS. BARNETT: They came from the highway patrol. Tim Walden had them, then they were transported.

THE COURT: How did they get to Tim Walden.

MRS. BARNETT: The regional crime lab sent them back.

THE COURT: Who lifted the prints?

1 MRS. BARNETT: The original prints were lifted  
2 by a witness who is unavailable, who is at the F.B.I.  
3 Training Academy, Stephen Worlen (Phonetic), from the  
4 regional crime lab.

5 THE COURT: He lifted them from what?

6 MRS. BARNETT: He lifted the prints off of the  
7 personal papers of [REDACTED].

8 THE COURT: Who's going to testify to all that?

9 MRS. BARNETT: I would have to call Stephen  
10 Worlen, who cannot be here to testify, that the prints  
11 were actually lifted. All I'm want to ask of Mr.  
12 Nilges is if he had occasion to review the card that  
13 was submitted to him by the St. Joseph Police Depart-  
14 ment in the case involving Eric Massey.

15 THE COURT: How is he going to say it involved  
16 Eric Massey?

17 MRS. BARNETT: He has the report that he can  
18 refer to.

19 THE COURT: Where did the report come from?

20 MRS. BARNETT: St. Joseph Police Department.

21 THE COURT: I'm sorry; I gave you every chance I  
22 can, but I can't see any connection at all, so your  
23 offer will be refused. Any objection will be sus-  
24 tained. Unless you got somebody who could testify  
25 that they took the print, he's going to be basing his

1 testimony on hearsay as to what he examined, and I  
2 don't think that's proper.

3 MRS. BARNETT: Thank you.

4  
5 (Proceedings returned to Open Court.)

6  
7 FRANK BOOTH, having been first duly sworn, testified:

8 DIRECT EXAMINATION BY MRS. BARNETT:

9 Q State your name for the record?

10 A Robert Frank Booth.

11 Q Are you employed, sir?

12 A Yes, I am.

13 Q Where is that?

14 A The Regional Crime Lab of the Kansas City, Missouri, Police  
15 Department.

16 Q How long have you been there?

17 A It will be eight years in February.

18 Q Would you state for the Court and the jury what your back-  
19 ground and training is?

20 A I have a B.S. degree in chemistry, and I've attended  
21 numerous job-oriented courses through my tenure at the lab.

22 Q What specifically has been your tenure at the lab?

23 A As a chemist.

24 Q Do you have any memberships in any professional organi-  
25 zations?

1 A I'm a member of the American Chemical Society. I'm a  
2 member of the American Academy of Forensic Science. I'm  
3 a member of the Missouri Association of Science.

4 Q Have you ever had occasion to qualify and testify as an  
5 expert in your field?

6 A Yes, I have.

7 Q Is there another name more specific for your field rather  
8 than just chemistry?

9 A Forensic chemistry.

10 Q Do you ever deal in what is called trace evidence?

11 A Yes, I do.

12 Q Has your experience at the lab included working on a case  
13 which was submitted to you by the St. Joseph Police Depart-  
14 ment?

15 A I've worked on many cases from St. Joe.

16 Q Would there be one involving Eric Massey?

17 A Yes, there was.

18 Q I'm handing you a sack that's been marked on the outside  
19 as State's Exhibit No. 8, and I'll tell you there is con-  
20 tained within it Exhibit No. 8-A. Would you remove the  
21 exhibit that's contained therein?

22 A It appears to be a bed sheet.

23 Q Have you had occasion in the course of your work on the  
24 St. Joseph Police Department case involving Eric Massey to  
25 examine that bed sheet?

1 A May I unravel it and search for my initials?

2 Q Yes.

3 A Yes; my initials are here in the corner.

4 Q As part of your examination, did you go through that bed  
5 sheet?

6 A Can I refer to my notes?

7 Q Do you need to refresh your recollection through your notes  
8 at this time?

9 A Yes, I do.

10 Q Okay.

11 A Yes; this is Item 1-2 in my report.

12 Q Referring then to your number 1-2 from your report, which  
13 is State's Exhibit 8-A, what did you do with that bed sheet?

14 A I examined it for trace evidence.

15 Q Were you able to find any?

16 A Yes, I did.

17 Q What form of trace evidence did you locate?

18 A Okay; there were blood splatters on the sheet, which I did  
19 not collect.

20 Q Why was that, sir?

21 A Well, it was reportedly the victim's bed sheet, and she--

22 MR. SCROGGINS: Objection, hearsay response.

23 THE COURT: Objection sustained.

24 Q Please continue. What did you find on the sheet?

25 A Okay; there were not any seminal stains observed on the

1 sheet.

2 Q What did you find?

3 A I found two typically Negroid hairs from the sheet.

4 Q In looking at those hairs, were you able to conclude what  
5 types of hair they were besides Negroid?

6 A One was a pubic hair, and the other I didn't classify as  
7 to body origin.

8 Q What did you do with those pubic hairs then? Or the hair;  
9 only one was a pubic hair.

10 A I mounted them on a microscope slide.

11 Q I'm showing you now a box which has been labeled State's  
12 Exhibit No. 29, and inside it is State's Exhibit No. 29-A.  
13 Would you take a look at that and see if you can identify  
14 it?

15 A Yes; my initials are on the screwdriver.

16 Q Is that in fact a screwdriver in front of you now?

17 A Yes, it is.

18 Q Did you examine that item?

19 A That would be Item No. 1-9 in my report. Yes; I did  
20 examine it.

21 Q What type of examination did you perform?

22 A I looked for trace evidence.

23 Q In looking for trace evidence, did you locate any?

24 A Yes, I did.

25 Q What was that, sir?

1 A There were stains testing positively for blood running  
2 along the shaft of the screwdriver. I collected some of  
3 these stains, and I did no further testing.

4 Q Why was that, sir?

5 MR. SCROGGINS: Objection as to why this witness  
6 did or didn't do anything else.

7 THE COURT: Sustained.

8 Q Is there any other substance present on the screwdriver?

9 A There was a greasy substance that came off with the blood.

10 Q Were you able to draw any conclusions after having viewed  
11 that greasy substance?

12 A I did no further testing with the substance; just collected  
13 it and retained it in the lab.

14 Q I'm showing you now what's been marked as State's Exhibit  
15 No. 25 on the outside, and contained within it are several  
16 individually marked exhibits. Would you take a look at the  
17 exterior of State's Exhibit No. 25?

18 A Okay; this is Item 1-20 in my report, which is listed as a  
19 rape kit recovered from [REDACTED].

20 MR. SCROGGINS: May we approach, your Honor.

21 THE COURT: All right.

22  
23 (The following proceedings were had  
24 outside the hearing of the jury:)

25 MRS. BARNETT: I forgot to tell him about that.

1 He was clearly reading from his report.

2 THE COURT: Well, it's not all that prejudicial.  
3 There's nothing you can do about it now. What do you  
4 want to do?

5 MR. SCROGGINS: Well, in some fashion, I want him  
6 instructed to-- Apparently, if he has not been in-  
7 structed as the Court ordered, then he's going to con-  
8 tinue to use the term. But there's nothing we can do  
9 about the one that's in there now.

10 THE COURT: Well, it makes it worse to explain to  
11 him in front of the jury. It'll look worse if you  
12 take him out of the courtroom while the jury is sit-  
13 ting here.

14 MR. SCROGGINS: The Court had ordered them to be  
15 instructed.

16 THE COURT: Well, he's from out of town.

17 MR. SCROGGINS: I appreciate that, but Mrs.  
18 Barnett did not remember to do that.

19 MRS. BARNETT: It's more of just the logistics of  
20 him being out of town and not readily available.

21 THE COURT: I appreciate that. Can you examine  
22 him without referring to that kit any more?

23 MRS. BARNETT: We can refer to the state's exhi-  
24 bits within the kit.

25 THE COURT: All right. You don't have to call it

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that. Have him refer to the kit.

MRS. BARNETT: I can just use the term "the kit".

THE COURT: Just lead him along. It's not really leading anyway. Just pick out the items you want to ask him about.

MRS. BARNETT: That's what I'm going to do.

THE COURT: And then we won't have any trouble.

MR. SCROGGINS: Then I have a foundational objection also, in reference to-- if I may get my notes to find out which of the items-- There was an item which I believe was identified by Tracy Boyer, and if I--

THE COURT: It would be either 25-B or -C.

MR. SCROGGINS: I believe it's 25-B, which she testified to be a blood sample.

THE COURT: And 25-C was a saliva sample.

MR. SCROGGINS: My objection on foundation is as to those blood and saliva samples. Miss Boyer could not lay a sufficient foundation. That was raised at the time. On cross-examination, she clearly indicated that she did not recall the taking of the blood, or if it was done in her presence.

THE COURT: Well, she said the rules required that it be done in her presence.

MR. SCROGGINS: She said those were the hospital rules, but she had no independent recollection--

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THE COURT: I appreciate that.

MR. SCROGGINS: That's an insufficient foundation for him to testify as to that particular blood sample.

THE COURT: What do you say about that?

MRS. BARNETT: Your Honor, the witness stated under oath that she did not have an independent recollection, but she knew that she had to have done it in that fashion. She was with [REDACTED] was her emergency room caretaker there in the E.R. I think all the circumstances lead us to conclude that she was present with [REDACTED] during the time when the rape kit was done.

MR. SCROGGINS: You're not allowed to lay foundation on circumstantial evidence. It has to be direct evidence.

THE COURT: Well, I don't know. What book says it can't be circumstantial?

MR. SCROGGINS: You have to have an established chain of custody. You have to show from whom--

MRS. BARNETT: Chain of custody can be established by circumstantial evidence.

THE COURT: I think so. Your objection will be overruled.

(Proceedings returned to Open Court.)

1 Q (Mrs. Barnett) That kit that's before you, the little box,  
2 is that in the same condition now as it was when you first  
3 received it?

4 A Except it's open.

5 Q It's been opened?

6 A Uh-huh.

7 Q Anything else added to the outside?

8 A A state's exhibit sticker. Outside of that, nothing else.

9 Q I may have already asked you. Did you have occasion to  
10 examine the contents of that small box?

11 A Yes, I did.

12 Q Specifically, I'm going to ask you now regarding certain  
13 exhibits contained in that small box.

14 A Okay.

15 Q I'll refer to what has been marked with State's Exhibit  
16 Label 25-H.

17 A Okay.

18 Q Do you have that before you?

19 A Yes, I do.

20 Q Is that exhibit in the same condition that it was when you  
21 first received it?

22 A Well, I opened it, but I received it in the same condition  
23 as it was when they left it.

24 Q Is there anything out of the ordinary about that exhibit  
25 now?

1 A A state's exhibit sticker.

2 Q When you examined State Exhibit No. 25-H, did you find--

3 MR. SCROGGINS: Objection, your Honor. May we  
4 approach?

5 THE COURT: Yes.

6

7 (The following proceedings were had  
8 outside the hearing of the jury:)

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10 MR. SCROGGINS: It's not been shown from whom  
11 this person received this sample that he is now going  
12 to testify about or anything else. I think that we  
13 are missing a vital link in the chain of custody on  
14 these items. It has to be shown from where this man  
15 received them. There has been no offer of any evi-  
16 dence as to--

17 THE COURT: I think he has to testify-- He says  
18 it's in the same what?

19 MRS. BARNETT: It's in the same condition as when  
20 he received it, except that there has been a state's  
21 exhibit sticker attached to it. He knows that he  
22 broke the seal and then resealed it.

23 THE COURT: Didn't somebody say they took it down  
24 there; somebody who said it?

25 MR. SCROGGINS: The question I think has to be

1 from whom he received it. That completes the link.

2 MRS. BARNETT: It's not necessary.

3 THE COURT: That's right. In other words, if I  
4 seal something-- say I sealed it, put my seal on it,  
5 and it's undisturbed when it comes back, it doesn't  
6 make any difference if it's been to Timbuktu, as long  
7 as it's in the same condition.

8 MR. SCROGGINS: He still didn't testify that he  
9 knew who--

10 THE COURT: The other witness already testified  
11 he sealed it. The only difference in it is that this  
12 other seal was added, which is not really a seal.

13 MRS. BARNETT: The exhibit sticker.

14 THE COURT: And this man is testifying that--  
15 Well, all right, it has to be clear. I don't think  
16 it's been clearly stated about his seals. I don't  
17 think you have gone into enough detail about the  
18 seals on the envelope. In other words, what condition  
19 it was in when he received it and when he left it.

20 MRS. BARNETT: All right; I will do that.

21 MR. SCROGGINS: That's my point. His seal only  
22 goes on after he examined it.

23 THE COURT: Also, what condition it was in when  
24 he opened it, if it was sealed by another tape when  
25 they opened it.

1 MR. SCROGGINS: All right; but we are talking  
2 about his sealing it and still being sealed only from  
3 the time he finished with it until the present time.  
4 That is now what I'm saying is missing. The thing  
5 that is missing is prior in time to that.

6 THE COURT: No. In other words, when he got it,  
7 it was sealed, if it was and the seal was done  
8 beforehand, it's just impossible to do what you want  
9 to do.

10 MR. SCROGGINS: No. I want him to testify about  
11 when he opened it. Apparently he broke the seal.

12 THE COURT: I don't know whether he did or not.  
13 That's what we're here for. Clear that up.

14 MRS. BARNETT: Wait a minute, please. He has to  
15 testify that the exhibit was in the same condition as  
16 when he got it.

17 MR. SCROGGINS: But he didn't testify to that.

18 THE COURT: All right; show him the paper, ask  
19 him what condition it was in when he got it. Let him  
20 tell it was in the same condition. I'm guessing he  
21 can. I think it will become clear then.

22  
23 (Proceedings returned to Open Court.)  
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1 Q (Mrs. Barnett) Mr. Booth, when you first received that  
2 particular item of evidence--

3 A 25-H?

4 Q Which is 25-H. You still have that in front of you?

5 A Right here in my hand.

6 Q What condition was it in when you first received it?

7 A It was sealed. The red tape was completely intact around  
8 this little cardboard packet. Untampered, unbroken, re-  
9 mained intact.

10 Q Is that particular Exhibit No. 25-H now in the same con-  
11 dition as it was when you first got it?

12 A No.

13 Q How does that differ?

14 A Okay. When I first got it, it was intact, as I stated  
15 earlier. I broke the seal, removed the contents and did  
16 my exam.

17 Q Then what did you do?

18 A I retained one of the items that was in this little packet  
19 in the laboratory. The other item was kept in the packet.  
20 I resealed it with my green tape. As you can plainly see,  
21 it is still sealed and intact.

22 Q Is there any other change in the condition of that par-  
23 ticular exhibit since you saw it?

24 A Outside of the state's exhibit sticker, none.

25 Q Did you examine that then?

1 A Within the packet were two microscopic slides. I took one  
2 out and I examined one.

3 Q What did you find?

4 A On the slide I found spermatozoa.

5 Q Spermatozoa?

6 A Yes.

7 Q Well, first of all, can you explain what spermatozoa is?

8 A Spermatozoa contains the male gamete.

9 Q Can you put it laymen's terms, where spermatozoa is found?

10 A In the male testicles.

11 Q How does it get out of the male testicles?

12 A When the male ejaculates, it's ejaculated out through the  
13 penis, through to the exterior.

14 Q I'd like for you to now pick up State's Exhibit No. 25-G,  
15 if you would, please?

16 A Okay.

17 Q Would you take a look at that exhibit?

18 A Yes; I see my initials on it.

19 Q Now, would you tell us how you received that, what con-  
20 dition it was in when you received it?

21 A Outside of the state's exhibit sticker; it wasn't there.  
22 This green tape wasn't there, which I placed on there. And  
23 the envelope was completely sealed. The red tape was com-  
24 pletely around this envelope.

25 Q Did you do anything with that sealed exhibit?

1 A I opened it up.

2 Q After you opened it up, what did you do?

3 A There were two cotton swabs within a plastic container in-  
4 side this envelope. I took one swab out. I took a section  
5 of it and examined it for acid phosphatase.

6 Q Why did you look on that swab for acid phosphatase?

7 A Indications for the presence of semen.

8 Q And semen is what?

9 A It's the ejaculate, which spermatozoa is a part.

10 Q Looking at that exhibit today, is it in the same condition  
11 now as it was when you first opened it?

12 A The envelope?

13 Q Yes.

14 A Yes; it's in the same condition as I had left it after I  
15 resealed it. I put both swabs back in there, though.  
16 There wasn't any point in doing any grouping on the swabs.

17 Q Why is that, sir?

18 A The swabs were bloody.

19 Q When you resealed it, what type of evidence tape did you  
20 reseal it with?

21 A The green laboratory tape.

22 Q I'd like to direct your attention to Exhibit 25-F,  
23 please.

24 A Okay.

25 Q Would you take a look at that, sir?

1 A Yes; I've got it.

2 Q What condition was that exhibit in when you first received  
3 it?

4 A The same condition it is in now, except for the state's  
5 exhibit sticker. I didn't open it.

6 Q I'm handing you now what has been marked as State's Exhibit  
7 No. 25-B, I believe.

8 A That's correct.

9 Q First of all, what condition was that exhibit in when you  
10 first received it?

11 A Just the same as the previous envelope I described. The  
12 state's exhibit sticker wasn't there. The green tape  
13 wasn't there, and the envelope was sealed.

14 Q What did you do with that exhibit?

15 A I opened it up.

16 Q Okay. For what purpose?

17 A To examine the contents.

18 Q What did you find in there?

19 A This was the blood and the saliva, the dry standard taken  
20 from the victim.

21 Q Did you perform any tests on the blood standard and the  
22 saliva standard?

23 A Yes, I did.

24 Q What type of tests?

25 A Okay; I determined the ABO group of the blood.

1 Q Any other tests?

2 A I tried two electrophloritic tests to determine the PGM  
3 grouping and the GC grouping.

4 Q These tests and techniques that you're talking about, the  
5 ABO grouping and the two electrophloritic tests, the GC  
6 and PGM, are these particular types of tests recognized  
7 among experts in your professional field?

8 A Yes; it's recognized--

9 MR. SCROGGINS: Objection; self-serving state-  
10 ment.

11 THE COURT: Overruled.

12 THE WITNESS: It's recognized throughout the  
13 world.

14 Q Why did you chose to run those particular tests?

15 A They had to do with the stains I collected on other items.

16 Q After performing these particular tests, were you able to  
17 reach any conclusions?

18 A Yes, I was.

19 Q What was that, sir?

20 A The ABO blood group was Type O, and the GC type group was  
21 1, and the PGM grouping, I couldn't conclusively determine  
22 those.

23 Q Why was that?

24 MR. SCROGGINS: Objection, your Honor, as to why  
25 he couldn't do anything in his investigation.

1 THE COURT: Objection sustained as to why it was  
2 inconclusive. Wait a minute. Overruled. I think  
3 that would be appropriate. You may answer.

4 THE WITNESS: Okay. The PGM is an enzyme which  
5 reacts depending upon its condition. If the condition  
6 is very frail; if you preserve it poorly, like leave  
7 it for an extended period of time, it deteriorates,  
8 rendering the PGM-- The electrophoretic patterns  
9 change; therefore, you can't conclusively determine  
10 what the grouping is.

11 Q Did you make any determination on the grouping at all,  
12 based upon your electrophoretic work in regard to PGM?

13 A I selected eight, but it wasn't verified.

14 MR. SCROGGINS: Objection.

15 THE COURT: We don't want speculation.

16 Q You cannot give your speculation, but you did say you did  
17 what then?

18 A Well, I recorded a speculative group then, but I did deter-  
19 mine the GC and successfully did the ABO grouping.

20 Q I believe you started to state after you attempted to per-  
21 form your PGM testing, that you had made some sort of re-  
22 quest, is that correct?

23 A Yes; for a proper blood standard.

24 Q Did you ever receive a proper blood standard?

25 A Yes, I did.

1 Q From where did you receive that?

2 MR. SCROGGINS: Objection; foundational.

3 THE COURT: Have you got it here? Show it to  
4 him. Let's see if he can tell what it is.

5 Q You have before you what has been marked State's Exhibits  
6 No. 41 and 42 contained in styrofoam?

7 A Yes; I see them.

8 Q Can you identify them?

9 MR. SCROGGINS: Objection; foundational.

10 THE COURT: Overruled.

11 THE WITNESS: This is the later-submitted blood  
12 sample from [REDACTED]

13 Q What did you do with that?

14 A Grouped it.

15 Q Using what tests?

16 A The same tests that I described earlier.

17 Q When you tested it, what blood groupings were there?

18 A Let me check my notes; I want to get this right. Blood  
19 group for type ABO was O; PGM Type 2 plus, 1 plus; and GC  
20 Type 1.

21 Q Did you collect any samples of blood from any other items  
22 that were submitted to you?

23 A Yes, I did.

24 Q I'd like to show you now what has been marked State's  
25 Exhibit No. 21 that I just removed from State's Exhibit

1 No. 26, the brown paper bag.

2 A Okay.

3 Q Would you have a look at that exhibit, please.

4 A This is a shirt, and it's labeled 1-21 in my report.

5 Q What did you do with that shirt?

6 A I examined it for trace evidence.

7 Q After you examined it, what did you do?

8 A I collected items of evidence from it.

9 Q Specifically, how did you do that?

10 A Visual examination.

11 Q Then anything else?

12 A I snipped the evidence off from the item.

13 Q After you had made those snips, what did you do with them?

14 A The snippings contained blood, which I grouped.

15 Q How did you ascertain they contained blood?

16 A By visual examination.

17 Q What tests did you perform to group the blood?

18 A The same as I described on the standard I talked about

19 earlier.

20 Q Would that be ABO, PGM and GC?

21 A That's correct.

22 Q What were the results of your testing?

23 A The blood on this shirt was AGO Type O and PGM Type 2 plus,

24 1 plus, and GC Type 1.

25 Q Mr. Booth, when you were testing the blood stains from this

1 particular exhibit, why did you choose to use these three  
2 tests?

3 A Okay. The ABO, you need a minimal amount of blood to  
4 determine them reliably, but as to the other groups, they  
5 require a lot more blood. Since these samples didn't  
6 render that possible, we did the three I could obtain that  
7 were the most reliable.

8 Q I present you now with a bag, State's Exhibit No. 27, which  
9 has contained in it a couple of exhibits.

10 A Okay.

11 Q This particular item is marked as State's Exhibit No. 23.

12 A Okay.

13 Q That item, can you identify it?

14 A This item is No. 1-23 on my report. I can identify it.  
15 It's got my initials written on the pants.

16 Q What did you do with that exhibit?

17 A Examined it for trace evidence.

18 Q Was there any result?

19 A Yes; I observed that there were blood stains on the pants.

20 Q After you made that observation, what did you do?

21 A Collected the blood stains. The blood stains that I  
22 collected were from the crotch of the pants, like the fly  
23 of the pants, and from the thigh.

24 Q What did you do with the stains that you collected?

25 A I determined the groupings on the stains from the fly,

1 and did not do anything further with the stains from the  
2 thigh.

3 Q Why was that?

4 MR. SCROGGINS: Objection.

5 THE COURT: Overruled.

6 THE WITNESS: I felt I had enough of a sample  
7 from this item from the fly rather than do both of  
8 them.

9 Q What type of a stain specifically, in your own professional  
10 parlance, did you have on the fly?

11 A It was a contact stain.

12 Q What does that mean?

13 A For a bloody item to make contact on a non-bloody item, it  
14 leaves an impression. If your hand is bloody, and you  
15 touch a clean wall, you leave a contact impression of the  
16 hand.

17 Q Working from the contact stain that you removed from the  
18 fly of that exhibit, what did you do?

19 A I did the same groupings as I described earlier on the  
20 other items.

21 Q Why did you use those groupings?

22 A The same reason I described earlier.

23 Q What was the results?

24 A The grouping of the blood was ABO Type O; PGM Type 2 plus,  
25 1; and GC Type 1.

1 THE COURT: GC Type what?

2 THE WITNESS: Type 1.

3 Q You have before you now a bag which contains State's  
4 Exhibit No. 3.

5 A Okay.

6 Q Take a look at that exhibit.

7 A Yes; it's still got my initials on the collar portion of  
8 the coat.

9 Q What did you do with that exhibit?

10 A I examined it for trace evidence.

11 Q Did you find any?

12 A Yes, I did.

13 Q Where was that?

14 A There were blood smears located on the back of this coat.  
15 I collected some from where the hole is, the part of the  
16 coat that is missing (Indicating). There were others up  
17 here by the sleeve, arm pit or the sleeve (Indicating).

18 Q After you made that collection, what did you do?

19 A I determined groups of blood, just as the other items as  
20 I described earlier.

21 Q The specific tests you performed were for ABO, PGM and GC?

22 A That's correct.

23 Q After you performed those tests for the groups, what were  
24 the results?

25 A The blood was ABO Type O; PGM Type 2 plus, 1 plus; and GC

1           Type 1.

2   Q       The results from these stains that you removed from those  
3           last three exhibits, did you form any conclusion after you  
4           had examined and tested those, and after you had examined  
5           State's Exhibit-- Just a moment.

6                   MR. SCROGGINS: Your Honor, I object. I assume  
7                   what Mrs. Barnett is asking for is an opinion from  
8                   this gentlemen, not for a conclusion from him.

9                   MRS. BARNETT: I will be glad to withdraw the  
10                  question and ask it again.

11                  THE COURT: All right.

12   Q       After looking at and testing State's Exhibits 41 and 42,  
13           State's Exhibit No. 3, State's Exhibit No. 23 and--

14   A       I didn't collect any blood from that one.

15   Q       Oh, you did not, excuse me. And after examining and test-  
16           ing the stains you found on State's Exhibits No. 3, 21 and  
17           23, and testing State's Exhibits 41 and 42, did you form  
18           any opinion?

19   A       On all four items, you mean?

20   Q       Yes.

21                   MR. SCROGGINS: Objection; same foundational ob-  
22                   jection as stated earlier.

23                  THE COURT: Overruled.

24                  THE WITNESS: Of all blood groups, I determined  
25                  that the four different types matched.

1 Q In your professional terminology, what is a match?

2 A Well, if one of the blood groups was different, let's say  
3 from blood group Type A, that means it didn't match; there-  
4 fore, the blood couldn't come from the same source.

5 Q When you received Exhibits 41 and 42, which are there be-  
6 fore you.

7 A Uh-huh.

8 Q Did you receive any other blood samples?

9 A Yes, I did.

10 Q I'm showing you now State's Exhibit 43 and 44.

11 A Okay.

12 Q Can you identify those?

13 A Yes, I can.

14 Q How is it you can identify those?

15 A They have got my mark on the tubes.

16 Q What condition were those tubes in when you received them?

17 A They were sealed. They were in an envelope. Within the  
18 envelope-- Let me back up. The tubes were present in a  
19 plastic bag, and the plastic bags were present in an  
20 envelope.

21 Q Was the envelope sealed?

22 A Yes, it was. The plastic bags were sealed also.

23 Q Thank you.

24 A The tubes were sealed also.

25 Q Is there any difference in the condition of those tubes

1 now?

2 A Including the sample--

3 Q Looking at the two exhibits I gave you?

4 A Well, one of them is in the same condition as I received  
5 it, and the other one is not. I opened the seal.

6 Q After you opened the seal, what did you do?

7 MR. SCROGGINS: Objection. Simply for a matter  
8 of clarity of the record, I think we need to identify  
9 them as separately marked items.

10 THE WITNESS: Okay; it's State's Exhibit 43.

11 THE COURT: All right.

12 Q What did you do with State's Exhibit 43 after you opened  
13 it?

14 A Grouped it.

15 Q Using what tests?

16 A The same tests as described earlier for the other items.

17 Q How did that blood group?

18 A ABO Type O; PGM Type 1 plus; and GC Type 1.

19 Q On the articles you examined for blood stains, did you  
20 find that type of blood?

21 A No, I did not.

22

23 (Two evidence bags being marked State's  
24 Exhibits No. 45 and No. 46.)

25

1 Q I'll hand you two exhibits, I believe No. 45 and 46.

2 A All right.

3 Q Can you identify those exhibits?

4 A Yes, I can.

5 Q How is it you can identify them?

6 A Because they contain slides with my initials on them.

7 Q When did you receive those exhibits?

8 A They came with all the other evidence on February 20,  
9 1987.

10 Q Each of those exhibits came at that time?

11 A Wait a minute. November 20, 1986. Pardon me.

12 Q Mr. Booth, could you take a look at the various property  
13 sheets there, and--

14 A All right; part of them came on November 20, and another  
15 portion of them came to the laboratory on April 10, 1987.

16 Q Dealing first with the batch that came on November 20,  
17 1986, did you examine those?

18 A Yes, I did.

19 Q What was the result of that examination?

20 THE COURT: Which number came on November 20?

21 THE WITNESS: They are kind of intermixed.

22 THE COURT: Okay.

23 THE WITNESS: Your question?

24 Q Okay. The Judge asked also what may be difficult for you  
25 to do, but it would be a good idea here. On November 20,

1 1986, the batch that you had then, is that separated in  
2 any way from the batch that came on April 10 of '87?

3 A No; they're kind of mixed together. I think State's Exhi-  
4 bit 46, all this came in on November 20th. State's Exhibit  
5 45 has contents from both the November 20th submission and  
6 the April submission.

7 Q Looking to State's Exhibit No. 46 for the moment. Did you  
8 examine those items?

9 MR. SCROGGINS: Objection; foundational.

10 THE COURT: He said he made the slides. Isn't  
11 that what he said?

12 THE WITNESS: I mounted the slides.

13 MR. SCROGGINS: Objection; unless it is shown--  
14 May I approach?

15 THE COURT: Yes.

16  
17 (The following proceedings were had  
18 outside the hearing of the jury:)

19  
20 MR. SCROGGINS: We don't have sufficient  
21 foundation yet as to where these hair samples came  
22 from.

23 THE COURT: I don't even know what we're talking  
24 about. That would help. What are they slides of?

25 MRS. BARNETT: Eric's pubic hair, the first

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sample.

THE COURT: He can't say that, can he?

MRS. BARNETT: He can only work from the property sheet.

THE COURT: I appreciate that, but you got to have some way of saying what it is he's examining, where it came from. I don't know how you're going to do that, but it looks like to me you should take the individual slides-- Don't you know which ones you want without going through all these slides?

MRS. BARNETT: Well, no. The first set of slides he examined produced inconclusive results. That's all we're going for right now, but I'm going to connect up on the source.

THE COURT: Well, can you stipulate or agree that the first set of slides he received in November were inconclusive and just forget all about that?

MR. SCROGGINS: I'm not going to stipulate to anything in reference to these, unless she can provide some sufficient foundation.

THE COURT: All right; we can do it this way: Ask him if he received-- He testified that he received some slides in November. Was he able to make any conclusive examination? He says no. That takes care of that. Then go on and tie up the other ones, because



1 A Within this item, State's Exhibit 46, was the hair sub-  
2 mitted from Eric Massey on November 20th, 1986. Also the  
3 two hairs that I collected off the sheet, which was my  
4 item 1-21.

5 Q You were working from the hairs that you collected off of  
6 your item 1-21?

7 A Right.

8 Q Which I believe you are holding up there now. Does that  
9 have a state's exhibit sticker on it?

10 A State's Exhibit 8-A.

11 Q What you were doing was comparing what with what?

12 A I was comparing Mr. Massey's hair from that previously--  
13 from the hair he submitted on November 20th to the hair I  
14 recovered from the bed sheet.

15 Q Were you able to make any conclusions at that time?

16 A No definite conclusions.

17 Q Could you describe the condition of the hair that you re-  
18 ceived on November 20, 1986?

19 A Okay. The head hair was in good shape. It was a good  
20 standard of head hair. The pubic hairs were not sufficient  
21 for a comparison.

22 Q Why was that?

23 A Most of the hair that was present was just fragments. Of  
24 those fragments, most of those were frayed and therefore  
25 was not a good comparable. There just wasn't enough of it

1 to do a definitive comparison.

2 Q After you had reached that conclusion or opinion, did you  
3 make any requests?

4 A I requested some more pubic hair from Mr. Massey.

5 Q Did you receive a response to that request?

6 A Yes, I did.

7 MR. SCROGGINS: Objection; foundational.

8 THE COURT: Overruled.

9 Q That was the submission that you talked about that came on  
10 April 10, 1987?

11 A Yes.

12 Q From what department?

13 A St. Joseph P.D.

14 Q What did you do with those items?

15 MR. SCROGGINS: Objection; foundational.

16 THE COURT: Come up, please.

17

18 (The following proceedings were had  
19 outside the hearing of the jury:)

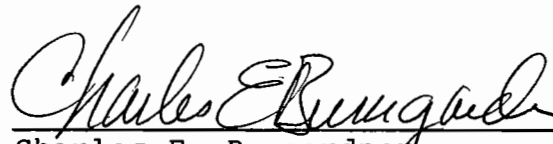
20

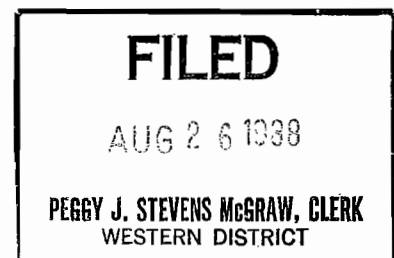
21 THE COURT: This here objection is well taken  
22 because, number one, you can't just say-- You cannot  
23 get into it by saying that it came from the St. Joseph  
24 Police Department. Take the pubic hair samples that  
25 he's got in his hand and find out if they're the same



REPORTER'S CERTIFICATE

I, Charles E. Bumgardner, Certified Court Reporter, hereby certify that I am the official court reporter for the Division No. 3 of the Buchanan County Circuit Court; that on Friday, July 9, 1987, I was present and reported all the proceedings had in the case State of Missouri versus Eric Massey, CR386-25FX, and I further certify that the foregoing pages 601 through 625 contain a true and accurate reproduction of the proceedings.

  
Charles E. Bumgardner  
Official Court Reporter



1 Police Department made that submission?

2 MR. SCROGGINS: Objection, your Honor.

3 THE COURT: Sustained. That doesn't do the job.

4 MRS. BARNETT: Your Honor, may we approach the  
5 Bench?

6 THE COURT: Yes.

7  
8 (The following proceedings were had  
9 outside the hearing of the jury:)

10 THE COURT: You've got to take those hairs-- I  
11 don't whether they're slides or whatever--take those  
12 hairs, pubic hairs, and somehow connect them to being  
13 those exhibit numbers. In other words, you've got to  
14 find out where he got them. You just can't say this  
15 guy could have brought some hair down any time, Walden  
16 could have. It's got to be the hair--

17 MRS. BARNETT: Walden testified that he brought  
18 the hair down.

19 THE COURT: All right; what did he say he brought?  
20 He brought a certain exhibit number?

21 MRS. BARNETT: No; he said he brought--

22 THE COURT: An envelope with some hair in it.

23 MRS. BARNETT: He took down there blood samples.  
24 He also testified that he took down there pubic hair,  
25 but we don't have the envelope of pubic hair. He's

1 got it in his file.

2 THE COURT: Well, how did he get it then?

3 MRS. BARNETT: Could I ask for a brief recess?

4 THE COURT: Yes.

5  
6 (The jury was excused from the court-  
7 room, and the following proceedings were  
8 had:)

9 THE COURT: Mr. Scroggins, they think there's another  
10 envelope inside that whoever took the sample put them in, and  
11 they want to open it up in your presence in front of the court  
12 reporter.

13 MR. SCROGGINS: Who sealed the envelope?

14 THE COURT: Well, they're saying on the inside, there's a  
15 completely sealed envelope that he sealed back and everything,  
16 so it really doesn't make any difference about this envelope.  
17 So, you can make whatever record you want. That's why they want  
18 to open it up outside the presence of the jury and see what we  
19 got.

20 MR. SCROGGINS: Is this the envelope we've been waiting on  
21 that was brought from Kansas City?

22 THE COURT: Yes.

23 MR. SCROGGINS: And the last person to seal this envelope--

24 MRS. BARNETT: Was Frank Booth. And immediately prior to  
25 that, Tim Walden.

1 MR. SCROGGINS: For purposes of the record, all we're doing  
2 now is, you're breaking the evidence tape that Tim Walden  
3 apparently has put on there.

4 THE COURT: That's right.

5 MRS. BARNETT: Inside it are three white envelopes with:  
6 "Pubic hairs, left side"; "Pubic hairs, right side"; "Pubic hairs  
7 from scrotum area." "John Williams, Reporting Officer."

8 The seals are broken, the St. Joseph Police seals, on all  
9 three; and there's the regional crime lab seals on two.

10 THE COURT: Why don't we mark those now as exhibits so we  
11 know what we're talking about.

12 (Three envelopes being marked State's  
13 Exhibits No. 47, 48 and 49.)  
14

15 THE COURT: All right; what is 47?

16 MRS. BARNETT: 47 is pubic hair reportedly removed from the  
17 left side of Eric Massey.

18 THE COURT: Pubic hair, left side. All right.

19 MRS. BARNETT: 48 is pubic hair, right side.

20 THE COURT: What about 49?

21 MRS. BARNETT: 49 is pubic hairs from the scrotum area.

22 THE COURT: The scrotum, okay.

23 MRS. BARNETT: Those were all just removed from the envelope  
24 we just received from the Kansas City Regional Crime Lab.

25 MR. SCROGGINS: Are there any accompanying sheets or docu-

1 ments that come with these?

2 MRS. BARNETT: The sheets or documents are in the regional  
3 crime lab file, and you have a copy of this (Indicating).

4 THE COURT: That was not in the envelope?

5 MRS. BARNETT: No. For the record, John Williams testified  
6 as to having placed pubic hairs-- At least it's my recollection  
7 that John Williams testified as having placed pubic hairs in  
8 envelopes and putting them in the evidence locker.

9 MR. SCROGGINS: I think it's necessary for foundation to  
10 have John Williams testify that these are the same envelopes.

11 MRS. BARNETT: He's on the way.

12 THE COURT: Well, I think that's necessary. So what we'll  
13 do, we'll put John Williams on. We don't have to worry about  
14 Walden because this doesn't make any difference. If Williams  
15 testifies that those are his seals and he put them in the locker  
16 and they're undisturbed, and then this man testifies that this  
17 is the way he got them and he's-- I don't know where his seals  
18 are.

19 MRS. BARNETT: Your Honor, they're on these two. He didn't  
20 open that one.

21 THE COURT: Oh, he didn't open that one up. Well, we don't  
22 even need to go into the scrotum, I guess, I don't know.

23 MRS. BARNETT: John is on his way right now.

24 MR. SCROGGINS: So we're still waiting on another witness?

25 MRS. BARNETT: Well, I think that would be the preferred

1 way to do it, go back to John.

2 THE COURT: Well, I'm not worried about it if you want to  
3 go ahead with him. How long is it going to be for him?

4 MRS. BARNETT: He'll probably be another 20 minutes.

5 THE COURT: Why don't we go ahead with this man.

6 MR. SCROGGINS: We have another matter to be taken up.

7 THE COURT: All right.

8 MR. SCROGGINS: My understanding is, we've got problems as  
9 far as the jurors are concerned in two areas. Number one, I  
10 understand that at least two of the jurors, possibly more, have  
11 been making phone calls to someone about something. I don't  
12 know if those were monitored phone calls or--

13 THE COURT: They were monitored. The bailiff stood right  
14 beside them while they were doing so. I told them they could do  
15 so. They wanted to tell their families they were going to be  
16 here another day.

17 MR. SCROGGINS: Well, secondarily, I understand during the  
18 time they were coming back from using the telephone, they were  
19 possibly privy to a conversation that was going on between your-  
20 self, myself and Mrs. Barnett, with one of the witnesses, one of  
21 the state's expert witnesses also being present. I don't know  
22 if they heard anything or not, but I do think it's necessary to  
23 ask them the question as to whether or not they overheard any-  
24 thing in their coming back from using the telephone prior to be-  
25 ing returned to the jury room.

1 THE COURT: I saw them going by, and we stepped to one side.  
2 I don't see how they could have, but I guess if you want to do  
3 that, you may do so.

4 MR. SCROGGINS: I would like to do that.

5 MRS. BARNETT: I have no objection.

6 THE COURT: All right.

7  
8 (A recess was taken, after which the  
9 following proceedings were had outside the  
10 presence of the jury of the jury:)

11 THE COURT: All right; we're on the record. What is it you  
12 want to do?

13 MR. SCROGGINS: I have indicated already that there is a  
14 possibility that two of the jurors may have overheard conver-  
15 sations which they should not have heard. I do not know if that  
16 is true or not. I think it's necessary that inquiry be made of  
17 them. I am requesting the Court to make that simple inquiry as  
18 to whether or not they heard anything, to avoid any possible  
19 prejudice that I am suspicious-- or that we are suspicious that  
20 they have done anything improper.

21 THE COURT: I don't think I should take over the inquiry.  
22 It might not be enough, then you would have to come up and have  
23 another conference. I don't see anything wrong in it, but if  
24 you want to ask them, I'll have the bailiff bring them in here  
25 one at a time, by themselves, and you can ask them any questions

1 you wish to ask.

2 MR. SCROGGINS: The only question--

3 THE COURT: Well, you'd have to ask them what they heard,  
4 if they did hear.

5 MR. SCROGGINS: If they did hear anything. And if the  
6 answer is no--

7 THE COURT: Well, they probably heard something. You know,  
8 they probably heard somebody talking about something. I don't  
9 know. There were people in the courtroom; there were people  
10 sitting out here. I don't know what they may have heard.

11 MR. SCROGGINS: The only conversation that I am interested  
12 in knowing whether they overheard is the conversation that in-  
13 cluded your Honor, Mrs. Barnett, and I don't know if the state's  
14 expert witness was involved in a conversation or if he was  
15 merely present.

16 THE COURT: Why can't you ask them yourself? What's wrong  
17 with you asking them?

18 MR. SCROGGINS: Because it's prejudicial to the defendant  
19 for me to ask that question. The inquiry should come from the  
20 Court. It's not through anybody's fault that--

21 THE COURT: No; it's not through anybody's fault. All  
22 right; I'll bring them in here.

23 Just go back there and pick out whichever ones you remember  
24 that made a phone call.

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(Two jurors were brought into the  
courtroom, and the following proceedings  
were had:)

THE COURT: All right; would you all come up and just sit  
in those chairs there.

Does either side want the jurors sworn?

MR. SCROGGINS: No, your Honor.

MRS. BARNETT: No.

THE COURT: All right. Would you state your name, please?

JUROR HECKER: Jimmie Hecker.

THE COURT: Mr. Hecker, did you go make a telephone call a  
few minutes ago?

JUROR HECKER: Yes, sir, I did.

THE COURT: Did you go through the courtroom?

JUROR HECKER: Yes, sir, I did.

THE COURT: Somebody has been concerned about what you may  
have heard or saw. Did you hear any conversation between Mrs.  
Barnett and myself and somebody else, or anybody?

JUROR HECKER: No, sir, I didn't.

THE COURT: All right. Does either side want to ask him  
any more?

MR. SCROGGINS: No, Judge.

MRS. BARNETT: No.

THE COURT: All right; thank you very much.

You are Lois Honeycutt?

1 JUROR HONEYCUTT: Yes.

2 THE COURT: Did you make a telephone call a few minutes  
3 ago?

4 JUROR HONEYCUTT: Yes.

5 THE COURT: Did you go through the courtroom on the way to  
6 and from the telephone?

7 JUROR HONEYCUTT: Yes.

8 THE COURT: Did you happen to hear any kind of a conver-  
9 sation between myself and Mrs. Barnett and maybe somebody else?

10 JUROR HONEYCUTT: No.

11 THE COURT: Anybody else want to ask any more?

12 MR. SCROGGINS: No, Judge.

13 THE COURT: All right; thank you very much.

14  
15 (Said jurors were returned to the jury  
16 room.)

17 THE COURT: Are we ready to proceed now?

18 MRS. BARNETT: If we're going to go back with Mr. Booth.

19 THE COURT: Let's go back with Mr. Booth, if you're satis-  
20 fied Mr. Williams is going to be here.

21 MRS. BARNETT: He will be here.

22 THE COURT: All right.

23 MR. SCROGGINS: Could I request there be an on-going object-  
24 tion until an adequate foundation is laid?

25 THE COURT: Well, it won't be offered until we get through.

1 It won't be offered into evidence until Mr. Williams has com-  
2 pleted the chain of custody.

3 MRS. BARNETT: Before the jury gets back in, I have noted  
4 on my record certain vials of blood of [REDACTED] had already  
5 been admitted. I notice that the Court's records didn't reflect  
6 that.

7 THE COURT: They might not have, I don't know.

8 MRS. BARNETT: I believe that [REDACTED] were admitted and  
9 Eric's were not.

10 THE COURT: I've got one of [REDACTED] -- No; that's the  
11 top sheet. Let's see. 25-B; blood sample and saliva sample  
12 together, and they were never offered. They were never offered  
13 or objected to or received.

14 MRS. BARNETT: I'm talking about a different blood sample.

15 THE COURT: Okay.

16 MRS. BARNETT: 41 and 42.

17 THE COURT: Well, I show them never being offered. Maybe  
18 you did offer them. I kind of feel like maybe you did.

19 MRS. BARNETT: I offered both [REDACTED] and Eric's, and Eric's  
20 was not admitted, according to my record, because it was pre-  
21 mature. [REDACTED] was not deemed to be premature, according to my  
22 notes. I need to know that.

23 THE COURT: I don't remember now what it was.

24 MRS. BARNETT: Do you have a record on that?

25 MR. SCROGGINS: The only thing I recall in reference to

1 that is that Eric's was offered and it was objected to as being  
2 irrelevant and immaterial. I do not recall hers being offered.

3 THE COURT: It seems to me like they were both premature,  
4 because all they were, were blood samples. They didn't prove  
5 anything. There's got to be something done with them to connect  
6 them, either connect them to some item in evidence, and so far  
7 I don't think either one of them have been connected. Well, he  
8 has said now what the blood types were, so that's already in.

9 MRS. BARNETT: What I'm trying to figure out is if I have  
10 to offer them through Frank.

11 THE COURT: I don't know whether you have to or not. I  
12 don't know as it makes any difference. I mean, he examined 41  
13 and 42 and he testified what the results were, and that's in  
14 evidence. So I don't know what difference it makes whether the  
15 blood samples got in or not.

16 MRS. BARNETT: I'll wait and make sure before I pass any-  
17 thing to the jury.

18 THE COURT: Okay.

19 MRS. BARNETT: I think it's a moot point.

20 MR. SCROGGINS: So does that mean if it's not offered,  
21 you're not going to offer it?

22 MRS. BARNETT: No; I expect I will go back and make an  
23 offer.

24 MR. SCROGGINS: Well, are you going to lay additional foun-  
25 dation. Is there going to be any additional foundation laid as

1 far as the blood samples, any additional testimony?

2 MRS. BARNETT: No; I've already completed the chain of  
3 custody on the blood.

4 THE COURT: Well, do you have an objection to 41 and 42?

5 MR. SCROGGINS: I would still make the same objection.

6 THE COURT: You have that same objection, all right. That  
7 objection is overruled, and 41 and 42 will be admitted because  
8 the jury has already heard the results of the examination by  
9 Mr. Booth. So show them admitted over the objection.

10 MRS. BARNETT: He also further testified as to his exami-  
11 nation of Eric Massey's blood, Exhibits 43 and 44, before we  
12 broke for recess. I'll offer those exhibits at this time.

13 THE COURT: They will be received. Okay; they're in now.

14 MRS. BARNETT: Thank you.

15 THE COURT: All right; bring in the jury.

16

17 (The following proceedings were had  
18 within the presence of the jury:)

19

20

20 CONTINUED DIRECT EXAMINATION BY MRS. BARNETT:

21 Q Mr. Booth, I'd like to show you State's Exhibits 30, 31,  
22 31-A, 31-B, 31-C and 31-D. Would you look at those exhi-  
23 bits, please.

24 A Yes; I have opened all of them.

25 Q You're identifying them here today?

1 A Yes; that's correct.

2 Q What condition were those exhibits in when you first re-  
3 ceived them?

4 A They were all sealed.

5 Q Are they in the same condition now today?

6 A No, they're not. They have the state exhibit sticker and  
7 my evidence tape on them.

8 Q Is that the only change in their condition?

9 A That's correct.

10 Q What did you do with these exhibits, if anything?

11 A I opened them up and removed the contents.

12 Q What did you do next?

13 A Each one of these contained hair. State's Exhibit 30 con-  
14 tained pubic hair, and State's Exhibit 31-A through -D  
15 contained head hair.

16 Q After you had opened them up and realized what their con-  
17 tents were, did you have occasion to perform any compari-  
18 sons between these exhibits and the two hairs that were  
19 found on State's Exhibit 8-A?

20 A Yes, I did.

21 Q What were the results of those comparisons?

22 A Okay; what came from State's Exhibit 8-A was the hair that  
23 I was able-- There was one pubic hair there, and the other  
24 hair I couldn't characterize. The comparisons of the pubic  
25 hair in relation to State's Exhibit 30 was inconclusive.

1           And the other hair on State's Exhibit 8-A did not match the  
2           head hair from Eric Massey, which was in State's Exhibits  
3           31-A through -D.

4   Q       At that time, when you had arrived at an inconclusive re-  
5           sult as to the pubic hair contained in State's Exhibit 30,  
6           how did you characterize the comparison on the remaining  
7           31-numbered exhibits?

8   A       Those were head hairs and not pubic hair from the state's  
9           exhibit. And the other hair, I couldn't characterize it.  
10          It did not match the head hair from State's Exhibits 31-A  
11          through -D.

12   Q       At that time did you make any further requests regarding  
13          hair samples?

14   A       I asked for additional pubic hairs from Eric Massey.

15   Q       Did you receive that?

16   A       Yes, I did.

17   Q       I'm handing you now what's been marked State's Exhibits  
18          25-E and 25-I. I'd ask you to look at those exhibits and  
19          see if you can identify them?

20   A       Yes, I can.

21   Q       Are those exhibits in the same condition now as when you  
22          first received them?

23   A       Except for the state exhibit sticker and my evidence tape.

24   Q       What did you do with those exhibits?

25   A       I opened them and removed the contents, which were hair

1 samples, which I mounted on microscope slides.

2 Q Whose hair samples were those?

3 A These were [REDACTED], head and pubic hair.

4 Q Did you have occasion to compare those hairs with any hairs  
5 found on State's Exhibit 8-A?

6 A Yes, I did.

7 Q And the results?

8 A They don't match. The hair from State's Exhibit 8-A is not  
9 [REDACTED]

10 Q I'm showing you now what's been marked State's Exhibits 47,  
11 48 and 49. Can you identify those exhibits?

12 A My initials are on State's Exhibits 47 and 48.

13 Q As to Exhibits 47 and 48, are those exhibits now in the  
14 same condition as when you first received them?

15 A Excluding the state's exhibit sticked and my own evidence  
16 tape, they are.

17 Q What did you do with those exhibits?

18 A I opened them up, removed the contents, which were pubic  
19 hairs, and mounted them on microscope slides.

20 Q Who were those pubic hairs from?

21 A Eric Massey.

22 Q Did you perform any comparisons of those pubic hairs and  
23 the pubic hair that was recovered from State's Exhibit 8-A,  
24 the sheet?

25 A Yes, I did.

1 Q With what result?

2 A The pubic hair from State's Exhibit 8-A matched the  
3 standard from Eric Massey, the sample that was submitted  
4 on April 10, 1987, together with that submitted on November  
5 20th, 1986.

6 Q When you say the pubic hairs from State's Exhibits 47 and  
7 48 were a match with the pubic hair that was recovered from  
8 the sheet, State's Exhibit 8-A, what do you mean by a  
9 match?

10 A The hair is indistinguishable from Eric Massey's.

11 Q Have you prepared any slides from the material that's been  
12 submitted to you in State's Exhibits 47 and 48?

13 A I took photomicrographs on slide film of the hair compari-  
14 sons.

15 Q Did you take a photomicrograph of any other hair standard  
16 that you looked at?

17 A Yes; I also have that hair from State's Exhibit 8-A  
18 compared against Miss Sample.

19 MR. SCROGGINS: May we approach on this, your  
20 Honor?

21  
22 (The following proceedings were had  
23 outside the hearing of the jury:)

24 MR. SCROGGINS: Judge, I'm not sure, but I've got  
25 the impression that we're getting ready to do some

1 type of demonstration. This expert witness has al-  
2 ready testified that they match. Nothing further can  
3 be obtained by way of evidence by putting anything on  
4 a slide or by showing anything-- I assume we're talk-  
5 ing about a photograph or some type of a slide of  
6 these things.

7 MRS. BARNETT: That was on my list of exhibits.  
8 They are right here. I have six of them.

9 THE COURT: Well, let's be sure what it is-- Is  
10 that what you're planning to do, is put on a slide  
11 show on those things?

12 MRS. BARNETT: Rather than refer to it as a slide  
13 show, I prefer to think of it as an exhibit for the  
14 jury to indicate, as Mr. Scroggins and I reviewed at  
15 the time of the deposition,--

16 THE COURT: I mean, are you going to put them up  
17 on a screen so they can see them?

18 MRS. BARNETT: Yes, sir.

19 THE COURT: That's what I thought. And you're  
20 objecting to that?

21 MR. SCROGGINS: Yes; I'm objecting to it. He's  
22 already given it.

23 THE COURT: The only way that I know of to pre-  
24 vent her from doing it-- She would have every right to  
25 do so, unless you're willing to stipulate those are

1 his hairs, that there's a perfect match. Otherwise,  
2 she's got to convince the jury that they are. The  
3 mere fact that the expert says so-- It's just like  
4 fingerprints. They quite often blow up fingerprints  
5 so the expert can show how they did it. They have a  
6 right to do that, until it's been established.  
7 Unless you're willing to say it's a perfect match. If  
8 you don't contest that part, then I think it's a waste  
9 of time and she's over-trying the case. But until  
10 that happens-- I'm not suggesting you should; I'm just  
11 saying until it does, she has a right to try to con-  
12 vince the jury that those two hairs are the same, or  
13 that they're indistinguishable.

14 MR. SCROGGINS: If it's on fingerprints-- It's  
15 not comparable to fingerprints, because you put a  
16 fingerprint up and you don't ask the jury to view it  
17 for comparison between two fingerprints. You put a  
18 fingerprint up and you have the witness testify.

19 THE COURT: Well, I've seen it done with two  
20 fingerprints to show why they're the same, compare  
21 them right there on the screen.

22 MR. SCROGGINS: Because there are points of com-  
23 parison that are obvious to the jury.

24 THE COURT: I assume there is with hair. I don't  
25 know, but I'm assuming there must be some way he can

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do it.

MR. SCROGGINS: Well, I've had a chance to look under the microscope. So has Mrs. Barnett. And the only thing that they're talking about, at least to my recollection when we went to the Kansas City Crime Lab, he simply put them next to each other, and they appeared to connect. But there's no fragments that fit together. There are no points of identification within these hair samples.

THE COURT: I know, but she has a right to try if she wants to.

MR. SCROGGINS: What I'm saying is, you're allowing the jury to form its own opinion about a matter which the jury is not qualified to form an opinion about.

THE COURT: All right, but it helps. You either got to do that or accept what he says.

MR. SCROGGINS: Well, I don't accept what he says.

THE COURT: All right; then there isn't any other way to do it.

MR. SCROGGINS: If the Court wishes to go ahead and allow it, then I object to the showing of these things.

THE COURT: Then your objection is overruled.

(Proceedings returned to Open Court.)

1 Q (Mrs. Barnett) Mr. Booth, what is it that's up on the  
2 screen at this time?

3 A This is a photomicrograph of what I was talking about  
4 eariler.

5 Q There are dimensions on this portion of the screen (Indi-  
6 cating)?

7 A Yes.

8 Q What's on the right side of this dividing line?

9 A First of all, this is viewed through a microscope, which is  
10 really two microscopes with a funnel so you can see both of  
11 them at the same time.

12 What's on the left side of the slide there is the un-  
13 known hair from State's Exhibit 8-A. This is down toward  
14 the root. What you see there is the beginning of the root,  
15 at the very bottom.

16 On the right side of the screen is the standard from  
17 Mr. Massey, about the same general location in one of his  
18 hairs.

19 Q After you viewed these, what conclusion did you reach?

20 A Those hairs are indistinguishable. They match in color;  
21 pigment distribution; cuticles the same thickness; all  
22 microscopic aspects are indistinguishable.

23 The next slide?

24 Q Please.

25 A Okay; this is the same point on that hair from State's

1 Exhibit 8-A.

2 Q Is that the exhibit on the left side?

3 A Yes; that's what on the left side. On the right side is  
4 the closest point within this of Miss [REDACTED] pubic stan-  
5 dard.

6 Q Miss [REDACTED] pubic standard?

7 A Yes. They're not even close.

8 Q The next slide, please.

9 A This is a point further up on the hair shaft.

10 Q Again, talking about the left side of the screen?

11 A Yes; that's the hair from State's Exhibit 8-A. And on the  
12 right side is from Mr. Massey's standard. All points of  
13 that hair are indistinguishable.

14 Q Would you explain to the jury what this blur is up here?

15 A That's a mark on the slide so I know at what point that  
16 matched previously.

17 Q Does that indicate the level of enlargement?

18 A Beg your pardon?

19 Q The dot, is this--

20 A That's just ink. It's just ink from the felt-tip pen.

21 Q What are these items here that I am referring to across--  
22 (Indicating)?

23 A That's another portion of the hair crossing over itself.  
24 It's the same hair; it's just some place else where it's  
25 curled over itself.

1 Q On each of the two different slides?

2 A Right.

3 Q It's the same hair on the left and the same hair on the

4 right?

5 A Well, they're indistinguishable.

6 Q My question is, is this curled-over part a part of this

7 hair (Indicating)?

8 A Right; that's correct.

9 Q And this curling over part is part of this hair (Indi-

10 cating)?

11 A Right. There's no way those two hairs could overlap, be-

12 cause one's on one microscope stage and the other is on

13 another, on two different slides.

14 Q And your conclusion, after having viewed this unknown hair

15 from State's Exhibit 8-A to Mr. Massey's pubic hair on the

16 right?

17 A They are indistinguishable. You can't tell them apart.

18 All the microscopical features are the same.

19 Next slide?

20 Q Yes.

21 A Once again, this is the same point. What's on the left

22 side is the same point from the unknown hair on State's

23 Exhibit 8-A. And what's on the right is the closest point

24 I could find of Miss [REDACTED] That doesn't match.

25 Q Again, the cross-over that you see on both slides, could

1           you explain that to the jury?

2   A       That's the same hair, a different part of the same hair  
3           overlapping.

4   Q       On each of the slides?

5   A       Now, on Miss [REDACTED], that may not be the case. The one  
6           that's crossing over could actually be another individual  
7           hair.

8   Q       Okay; the next slide?

9   A       This is another point of the same hair further up the hair  
10          shaft.

11   Q       That's the part that's on the right side?

12   A       Yes. Well, what's on the left side is from State's Exhibit  
13          8-A, that one pubic hair we've been talking about all along.  
14          That's just another point along the same hair.

15                 What's on the right side is a hair from Mr. Massey's  
16          hair standard, pubic hair standard. Again, all the points  
17          are indistinguishable; the microscopic characteristics are  
18          the same.

19   Q       Is there another slide?

20   A       Yes; there's one more.

21   Q       Could you explain what this is?

22   A       Okay; this is again the same point as the previous slide.  
23          What's on the left is the unknown pubic hair from State's  
24          Exhibit 8-A. And what's on the right side is the closest  
25          point of Miss [REDACTED] pubic hair.

1 Q By closest point, what do you mean?

2 A The closest point that I could match to that point you see  
3 on the left side.

4 There are no other slides; that's it.

5 THE COURT: Just shut it off and leave it there,  
6 in case Mr. Scroggins wants to use it.

7 MRS. BARNETT: Your witness.  
8

9 CROSS-EXAMINATION BY MR. SCROGGINS:

10 Q If you don't mind, Frank, just turn that back on, please.  
11 We might as well talk about that since it's the most recent.

12 First, let's clarify some language considerations.

13 A Okay.

14 Q When you say something is indistinguishable, you are not  
15 stating that it's from the same source, is that correct?

16 A No; I'm not saying that this is Mr. Massey's hair. I'm  
17 just saying that he matches.

18 Q Okay. Now, one question throughout these exhibits, the  
19 hair on the left has stayed constant, is that correct?

20 A That's correct.

21 Q And that is Exhibit No. 8-A that was one of the two pubic  
22 hairs that you had removed from a bed sheet, is that  
23 correct?

24 MRS. BARNETT: Objection. The two hairs were not  
25 categorized as both pubic hairs. There's definitely

1           one pubic hair.

2           THE COURT: Well, straighten that out. You looked  
3           at two hairs from the bed sheet?

4           THE WITNESS: Right. One I could not characterize  
5           as to body origin. It's a Negroid hair; that's all I  
6           can tell you. The other hair was definitely Negroid  
7           pubic hair.

8 Q       You characterized the one that you're now describing as un-  
9       known in your report as "probable pubic hair," didn't you,  
10       "probably Negroid pubic hair"?

11 A       I may have stated that in my report.

12 Q       If you need to refresh your recollection, please do.

13 A       You are correct.

14 Q       So, as best you could tell, it was pubic hair also, wasn't  
15       it?

16 A       That's speculative.

17 Q       The best you could tell?

18 A       The best I could tell.

19 Q       But you did compare it to Eric Massey's pubic hair sampling?

20 A       That's correct.

21 Q       And you did compare it to Eric Massey's head hair sampling?

22 A       That's correct.

23 Q       Were there any other samplings of Eric's that you compared  
24       that to?

25 A       No; that's all. I think some arm hair was submitted, too,

1 but I did not compare that.

2 Q Now we're back to semantics. You would say that your re-

3 sults of that comparison were inconclusive?

4 A To the hair I did not categorize as to body origin?

5 Q Yes.

6 A That's correct.

7 Q In other words, it was distinguishable?

8 A Right; I could tell it apart from Mr. Massey's.

9 Q But you couldn't say that it was not his?

10 A That's correct.

11 Q You're not going to say that it was not his?

12 A That's correct.

13 Q But you can say that in all the samples that you looked at,

14 you could not find another sample--

15 A That was indistinguishable; you're correct.

16 Q So we have two pubic hairs, one that you call inconclusive

17 and you can't assign to Eric, and one that you call a

18 match?

19 A That's correct.

20 Q And again, the match does not mean-- You're not saying it's

21 Eric's; you're saying that you can't distinguish it from--

22 A It's indistinguishable from Mr. Massey, correct.

23 Q Now, this one that you brought slides to show to the jury,

24 this is the one that you matched, in your language?

25 A That's correct.

1 Q Did you bring any slides of the other ones so that the jury  
2 could look at it?

3 A No, I didn't.

4 Q The hairs as the jury is viewing, on the jury's right-hand  
5 side of this screen, how many different samples, how many  
6 different standards have been shown in these slides?

7 A Mr. Massey's and Miss [REDACTED].

8 Q All right. How many of each?

9 A I don't understand what you mean by standards.

10 Q Well, if I'm not using the correct laboratory terminology,  
11 I'm sure that you will correct me. What I'm after--

12 A Is how many comparison hairs did I use to make the com-  
13 parisons within the standard?

14 Q Yes.

15 A All of them. All of them that I mounted.

16 Q Now, will this thing go backwards?

17 A It sure will.

18 Q Well, hold it. This that we're now looking at, you have  
19 identified as-- When I say "this", I'm pointing to the one  
20 on the right, for the purposes of the record, the jury's  
21 right. That hair standard came from whom?

22 A Miss Sample.

23 Q All right. This appears to be two different strands?

24 A That's two different hairs.

25 Q All right. Can you go back one slide now?

1 A (Witness complying.)

2 Q Now, the one that's on the jury's right.

3 A Yes.

4 Q Is a single strand of a standard you believe to have been  
5 from Eric, is that correct?

6 A That's submitted as Eric's standard, yes.

7 Q Can you flip back one more?

8 A (Witness complying.)

9 Q Now, the standard on the right?

10 A Yes; that's Miss [REDACTED]

11 Q All right. Is that the same standard as the one--

12 A The previous slide of Miss [REDACTED] That's a different hair.

13 Q All right. Go back one more, please.

14 A (Witness complying.)

15 Q All right. This sample to the jury's right, is this the  
16 same standard?

17 A From the other side of Mr. Massey? It could be a different  
18 hair. It's a different hair.

19 Q All right; go back one more, please.

20 A (Witness complying.)

21 Q This is a standard of Miss [REDACTED], is that correct, on  
22 the jury's right?

23 A Yes.

24 Q Is this the same one as either of the other two?

25 A No; that's a different hair altogether.

1 Q Is there another one to go back to?

2 A Yes; one more (Witness complying).

3 Q And this standard to the jury's right, this is again a  
4 standard that was marked as coming from Eric, is that  
5 correct?

6 A That's correct.

7 Q Is this the same as either one of the other two standards?

8 A No; that's a different hair completely. There are three  
9 different hairs from Mr. Massey's sample in this slide.

10 Q So what we are showing the jury, we have taken one hair  
11 standard, or one hair of unknown origin--

12 A That's correct.

13 Q And we have gone through how many different--

14 A On this case, three hairs, but it's the entire standard.

15 Q That was my question you correctly anticipated. How many  
16 different standards purported to be from Eric Massey did  
17 you go through before you were able to find this particular  
18 one, for example?

19 A I went through every hair.

20 Q How many was that total?

21 A I don't recall. We can count them if you want. There's  
22 probably 50 there, I'll bet.

23 Q And all that we are seeing on this standard of Eric's hair  
24 are a small portion of that particular standard, is that  
25 correct?

1 A That particular hair strand?

2 Q Yes.

3 A Just a short segment of it.

4 Q So tell me if I'm right. We have a hair of unknown origin,  
5 the one that you testified came from the sheet?

6 A Off the sheet, uh-huh.

7 Q And you would take some 50, give or take a few, hair stan-  
8 dards of Eric's, and go up and down your hair of unknown  
9 origin until you found a point of similarity with a stan-  
10 dard of Eric's?

11 A Sure.

12 Q And that is what we have seen?

13 A Right.

14 Q All right. Out of 50-plus standards that you looked at,  
15 we've seen the end results of that work, is that correct?

16 A Sure.

17 Q And these are the only three areas that you were able to  
18 match by doing that?

19 A No; that's the three I picked for the photomicrograph. I  
20 could have shown others, but there was not much information  
21 in a lot of that unknown hair and Mr. Massey's hair.

22 Q Out of the 50 that you viewed, is it fair to say that all  
23 the rest of them were distinguishable, or indistinguishable,  
24 or inconclusive?

25 A Sure; that's fair. That's not unusual on any base hair

1 standards. That's not remarkable whatsoever.

2 Q The other sample or standard that you observed from the bed  
3 sheet--

4 A The other hair, you mean?

5 Q Yes. You compared it to all 50-plus samples of Eric's hair  
6 also, didn't you?

7 A That's correct; his head and pubic hair.

8 Q So it was more than 50?

9 A Sure.

10 Q And you couldn't match, in your terminology, any of those  
11 with that hair?

12 A That's correct; I couldn't reach a conclusion.

13 Q All right. I'm going to use the term macroscopic.

14 A Okay.

15 Q Would you explain to the jury what that means?

16 A It's basically looking at it with the naked eye.

17 Q And we used the term microscopic, and it means what?

18 A Looking at it with the assistance of a microscope.

19 Q Okay. Macroscopically, to the naked eye, when you looked  
20 at those two Negroid hairs that were found on the bed sheet.

21 A Okay.

22 Q Could you macroscopically distinguish them?

23 A The one pubic hair that you saw on the slides, I couldn't.  
24 They were indistinguishable with Mr. Massey's standard.  
25 The other hair that you're referring to was distinguishable.

1 Q I'm not asking for a comparison of those two with Mr. -  
2 Massey. I'm talking about a comparison of those with each  
3 other?  
4 A Yes; they were distinguishable.  
5 Q Were they distinguishable to the naked eye?  
6 A Yes.  
7 Q As to the other one that you cannot hook up in any fashion  
8 to Eric, you could identify that it was a Negroid hair?  
9 A That's correct.  
10 Q But you don't know from what part of the body?  
11 A That's correct.  
12 Q Did you ever ask for additional standards from Eric, or  
13 samples from Eric from other parts of his body? For  
14 example, for additional head hair, or for anything other  
15 than what you have testified to already?  
16 A No, I didn't.  
17 Q Is it possible to ever determine that a hair did not come  
18 from a particular person?  
19 A Sure. As seen on the slides, you can tell that the hair  
20 didn't come from Miss [REDACTED].  
21 Q Well, let's narrow that down a little bit more. Would it  
22 be possible with two Negroid hairs to determine by com-  
23 parison to other Negroid hairs, that those two hairs had  
24 come from different sources?  
25 A I don't understand what you mean.

1 Q The one hair that you could not match to Eric in any  
2 fashion--

3 A Well, it was inconclusive.

4 Q Well, I understand you earlier to say that inconclusive  
5 means you could not match it?

6 A I couldn't make a conclusion.

7 Q If you could match it, it is conclusive, is that correct?

8 A Correct.

9 Q So the one that you could not match to Eric in any fashion,  
10 that particular Negroid hair, would it be possible to  
11 determine, for example, that that had not come from Eric?

12 A From his head standards, you mean, from his head and pubic  
13 hair standards? I can't eliminate Eric as contributing  
14 that hair, no. I can't make a conclusion one way or the  
15 other.

16 Q Is it possible that upon further investigation, you could  
17 have eliminated Eric from being the source?

18 A It's not his head hair, and I can't match it to his pubic  
19 hair. Maybe it's from another source, like maybe his chest  
20 hair or arm hair.

21 Q Did you ask for any such samples from a chest hair or arm  
22 hair?

23 A No, I didn't. I had arm hair. I didn't look at the arm  
24 hair.

25 Q So you didn't even bother to compare the arm hair at all?

1 A That's correct.

2 Q Are Negroid hairs macroscopically distinguishable from  
3 hairs from other races?

4 A Usually.

5 Q Macroscopically, what were the differences between the two  
6 hairs that you recovered from the bed sheet?

7 A Okay; the main feature of the one that an inconclusive re-  
8 sult was obtained was that this hair was coiled hair,  
9 coiled about itself. And Eric's hair didn't exhibit that  
10 feature, any standards that I looked at.

11 Q All right. So we have a standard that's recovered from the  
12 bed sheet that has what you're describing as a coiled  
13 feature; that you did not find that feature present in any  
14 of Eric's hair standards that you compared, is that correct?

15 A That's correct.

16 Q All right. Let's talk blood for a second. You took, if I  
17 understand correctly, several different blood--am I correct  
18 in saying standards--from different articles of clothing?

19 A I call those samples.

20 Q Okay; we'll call them blood samples then. You took those  
21 from what has been marked as State's Exhibit 21, which is  
22 a shirt, is that correct?

23 A That's correct.

24 Q And you did take-- or did you take--

25 A Yes; it's been established earlier. I did that.

1 Q I don't see where it is, but I assume you did.

2 A On the other side. Turn it around.

3 Q Would you like--

4 A Want me to hold it up for you?

5 Q Okay; hold it up. Better yet, hold it up for the jury,

6 would you please?

7 A See the hole around the arm pit there? That's the sample

8 I cut out (Indicating).

9 Q All right. Now, in reference to this item, Exhibit No. 21,

10 the standard that was taken from this shirt, did you

11 analyze it?

12 A I grouped it, sure.

13 Q And do you recall what the grouping was?

14 A Yes; we had gone over that earlier.

15 Q Do you recall what the grouping was?

16 A Uh-huh.

17 Q Could you tell us what that is, please?

18 A The blood was ABO Type O; PGM Type 2 plus 1 plus; and GC

19 Type 1.

20 Q All right. And in reference to State's Exhibit No. 3, is

21 it correct that you also took a blood sample from that

22 exhibit?

23 A That's correct.

24 Q And in order to do that, you cut out a piece of the jacket?

25 A That's correct.

1 Q And it's on the back portion of the jacket?

2 A That's correct.

3 Q In reference to that particular blood sample, did you group  
4 it?

5 A Yes, I did.

6 Q What was the grouping there?

7 A The same as it was with the shirt.

8 Q All right. And in reference to the pants, what's been  
9 described as State's Exhibit No. 23, do I understand  
10 correctly that you took two standards from it?

11 A Two samples.

12 Q I'm sorry; two samples from it?

13 A That's correct.

14 Q One of those samples came from the fly of the pants?

15 A That's correct.

16 Q You cut out a portion of the jeans?

17 A Yes, I did.

18 Q And the other came from a circled area that's circled in--

19 A Black ink.

20 Q Black ink, on the thigh of the pants?

21 A That's correct.

22 Q Now, in reference to the circled portion from the thigh of  
23 the pants, did you group it?

24 A No, I did not.

25 Q Is there a reason that you did not group that?

1 A I felt I had a sufficient sample from the fly. If the fly  
2 was different, I would have looked at the thigh.

3 Q So as far as the sample itself is concerned, to the best  
4 of your knowledge, it could have been grouped?

5 A That's correct.

6 Q But you didn't bother to do that?

7 A That's correct.

8 Q You did first in time the one from the fly of the pants?

9 A That's correct.

10 Q You were looking for a particular thing?

11 A Right; I was comparing it to the standards that we had  
12 discussed earlier.

13 Q And you found it--

14 A To match.

15 Q So you went no further.

16 A That's correct.

17 Q So you don't know whether or not the blood that was on--  
18 Let me ask you that first. Did you even go so far as to  
19 verify that it was blood on the thigh of the pants?

20 A Visually, yes; it looked like blood.

21 Q So you ran no type of analysis at all to even establish  
22 that that in fact was blood?

23 A That's correct.

24 Q Would it have been possible, had you grouped it, to deter-  
25 mine whether it was consistent with the blood on the thigh?

1 A Sure; if the groups matches.

2 Q Would it have been possible, had you grouped it, to deter-  
3 mine that it was not consistent?

4 A If the groups don't match, then they're not consistent.

5 Q But you didn't think--

6 A Since they weren't around, we don't know.

7 Q In your opinion, you did not think it was significant to  
8 show whether or not it was in fact blood, and whether or  
9 not it was in fact consistent with the blood you had  
10 earlier found on the fly of the pants?

11 A That's a fair estimate, yes.

12 Q Now, as to your earlier testimony in reference to three  
13 categories of groupings-- is that a correct terminology?

14 A That's good.

15 Q That you have performed. I believe you referred to one of  
16 those as an ABO Type?

17 A That's correct.

18 Q All right. Can you explain that to us so we know what an  
19 ABO Type is, in language that we can understand?

20 A I'll do my best. Want me to go on?

21 Q Yes.

22 A The ABO groups, what they are is little chemical receptors  
23 on the surface of your red blood cells. They identify--  
24 That tells your body that that indeed is your blood. So if  
25 you're a Type A, you've got little "A" signals sticking on

1 top of the surface of the cell. If you're a Type B person,  
2 you've got the little "B" chemicals on the surface of your  
3 cell. If you're a Type O, then you don't have any of that,  
4 and if you're a Type AB, you've got "A" and "B" receptors  
5 on the surface of your cell.

6 So when this blood flows through your blood stream, if  
7 you are indeed a Type A, they know that that blood is okay.  
8 However, if you transfuse somebody that's a Type B into  
9 somebody that's a Type A, then you have a transfusion re-  
10 action. Your body will react to the Type B blood.

11 Q All right; let me stop you. Let me ask in laymen's termi-  
12 nology, from what you just said then, are there four cate-  
13 gories?

14 A For the ABO groups, yes.

15 Q For the ABO groups?

16 A Well, excluding the real rare "A" type.

17 Q Okay. So there are more than four?

18 A Well,--

19 Q Do you know how many there are total?

20 A There are four common ones. You know, almost 99.99 percent  
21 of the time, you're going to find one of those four.

22 Q How many are there total, do you know?

23 A Well, four.

24 Q Total different ABO types?

25 A Well, if you're counting Bombay, then there would be five.

1 Q So there are just five?

2 A Right.

3 Q There are four of those that are common?

4 A Right; extremely common.

5 Q And as a layman's interpretation, is this the thing they  
6 put on your dog tags in the Service?

7 A That's it.

8 Q So that they say you're a blood Type A or blood Type O, or  
9 whatever?

10 A That's correct.

11 Q What type of ABO is [REDACTED]?

12 A She's an "O".

13 Q What type of ABO is Eric Massey?

14 A He's an "O".

15 Q All right. Now, the other thing that you talked-- or one  
16 of the other two things that we have discussed, I believe  
17 you called it a PGM Type?

18 A Yes.

19 Q Again, as simply as you can, can you tell us what PGM Type  
20 is?

21 A Well, PGM is an enzyme. Enzymes are basically biological  
22 catalysts. They make reactions in your body to make it  
23 energetically efficient. PGM is one of those enzymes, and  
24 depending on your genetics, depending on your parents' PGM  
25 Type, you inherit a particular type of PGM. Now, there are

1            basically ten types, common types, within the human species,  
2            and there are a few rare ones, too.

3    Q        So there are basically ten common types?

4    A        That's correct.

5    Q        And as to PGM Type, what type was [REDACTED]?

6    A        She's a 2 plus 1 plus.

7    Q        And what type is Eric Massey?

8    A        He's a 1 plus.

9    Q        All right. And you say there are basically ten types of  
10           those?

11   A        That's correct.

12   Q        Common types, correct?

13   A        Yes.

14   Q        Now, I'm going to regress here a little bit, too. On ABO  
15           Type O, what you earlier testified to, what percentage of  
16           the caucasian poplation has ABO type O?

17   A        45 percent.

18   Q        And what percentage of the Negroid population has ABO  
19           Type O?

20   A        About 50 percent.

21   Q        And PGM Type 2 plus 1 plus, what percentage for caucasian?

22   A        About 20 percent.

23   Q        And for Negroid?

24   A        Roughly, about 20 percent.

25   Q        And the third category that you talked about I believe was

1 called the GC Type?

2 A That's correct.

3 Q Real simply again, if you could, please, what is the GC  
4 Type?

5 A Okay; the old nomenclature is GC, which stands for Group  
6 Specific. The reason why they're moving toward the nomen-  
7 clature of Vitamin D binding protein, so when you ingest  
8 vitamin D, the GC protein binds it up to transport it in  
9 the body. So GC, that's its job.

10 Q How many different types of GC are there?

11 A In the particular test that I did in this case, there are  
12 three common ones. And there's some variance, too, some  
13 rarer types.

14 Q There are additional ones that are not involved?

15 A Yeah; you could sub-group the Type 1 with more specificity.

16 Q Why would you sub-group Type 1 to be more specific?

17 A Well, it's just the way it works out. They found out about  
18 maybe eight years ago that there are different types of  
19 Type 1 GC, and the technique is a lot different than what  
20 we have been using to identify GC in the past.

21 Q Okay. Is there a name for that type of classification?

22 A No; just--

23 Q Just additional classifications of GC Type 1?

24 A Well, they just call them different names because they're  
25 different.

1 Q How many additional ways or categories?

2 A Okay; there's three additional types of GC, but one common  
3 type.

4 Q Do you have the ability at your lab to perform the  
5 additional tests that would be more specific as to further  
6 breakdowns of GC Type 1?

7 A We do now.

8 Q You do now?

9 A Yeah; I came across a procedure about a month ago, maybe  
10 two months ago, on doing it with augorest instead of acrylo-  
11 mite (Phonetic). I'm getting technical here. We don't  
12 usually use the acrylomite (Phonetic) technique, which is  
13 the way they found the GC variance before. We don't do the  
14 acrylomite. Augorest (Phonetic) is much safer, cleaner.

15 Q You don't do the other one why?

16 A The acrylomite is toxic.

17 Q Okay; it's dangerous to the person that's actually doing  
18 the test?

19 A Yes.

20 Q Or it can be?

21 A It can be.

22 Q As to GC Type 1, what percentage of the caucasian population  
23 has that?

24 A Roughly about 50 percent.

25 Q And what percentage of the Negroid population has that?

1 A About 70 percent.

2 Q And [REDACTED] had what type?

3 A GC Type 1.

4 Q And what type did Eric Massey have?

5 A He's Type 1.

6 Q So there are three categories that you ran comparisons on,  
7 two of which were common between Miss [REDACTED] and Eric?

8 A Right; they share the same groups in those two.

9 Q Now, are there additional genetic markers or other ways in  
10 which to identify blood besides these three tests?

11 A Well, there's many more genetic markers.

12 Q Do you have an approximation as to the number of genetic  
13 markers?

14 A If you combine everything that you could possibly do, you  
15 could probably determine about 90 genetic markers.

16 Q So there are 90-plus; is that a fair statement?

17 A That's a fair estimate.

18 Q And you would agree that the more genetic markers that the  
19 comparison has, the more accurate the comparison?

20 A Well, the better the probability that you can distinguish  
21 two different people.

22 Q All right. Did you run these three, and only these three,  
23 because you were unable to run any additional ones?

24 A The reason I only ran these three was I didn't think any  
25 other groups would be successful on the samples that I had

1 to work with.

2 Q All right. Now, that would sound like a reference that the  
3 samples were not good samples?

4 A Well, they were smaller samples. The one on the coat, for  
5 instance, was a smear. So you have to swab the blood up,  
6 and it's distributed out over a large area, so there really  
7 wasn't as much blood as there appeared to be on the coat.  
8 It covered more area than there was actual blood.

9 Q So to do additional tests would have been difficult?

10 A It wouldn't have been any more difficult. It's just that  
11 you wouldn't have as high a chance of acquiring the  
12 additional groups.

13 Q So you didn't think it would be successful so you didn't  
14 do it?

15 A That's correct.

16 Q Didn't try?

17 A That's correct.

18 Q You didn't try to identify any of the other 90-plus genetic  
19 markers that might have been present in Eric's blood, Miss  
20 [REDACTED] blood, and the samples that you were looking at?

21 A Well, I did run additional samples on Eric's blood. I did  
22 determine additional groups on Eric's blood, but since they  
23 didn't pertain to the case, I didn't report them.

24 Q It wasn't comparable, or you couldn't--

25 A Well, since I didn't on Opal Sample's, what was the point?

1 Q All right; I'm not asking you as to why you did or didn't  
2 do something. I'm just asking you if you did. And you  
3 didn't; you ran three?

4 A On the standards from the clothing, I only ran three  
5 markers, you're right.

6 MR. SCROGGINS: I have no further questions of  
7 this witness. Thank you.

8 THE COURT: Would you both step up, please?

9  
10 (The following proceedings were had  
11 outside the hearing of the jury:)

12 THE COURT: My notes aren't always accurate, but  
13 this is what bothers me, if I come up later on-- My  
14 notes say that 25-G was a swab, and he put some kind  
15 of acid test of some sort looking for something.

16 MRS. BARNETT: Acid phosphatase.

17 THE COURT: But I never did get down whether he  
18 found any or didn't find any. I think he did testify  
19 on the slide on -H that he found some spermatozoa, but  
20 did he say that he did find semen or did not find  
21 semen, or did I just miss it?

22 MRS. BARNETT: My recollection is that he did say  
23 he found semen.

24 THE COURT: What's your recollection?

25 MR. SCROGGINS: My recollection is that he didn't

1 testify about it. He was never asked the question.

2 THE COURT: I've got where he said he was looking  
3 for semen; that's all I remember.

4 MR. SCROGGINS: Well, if I understand the proce-  
5 dure correctly, the test will not-- he's not able to  
6 find sperm.

7 THE COURT: I'm not talking about sperm. -H was  
8 sperm. -G was semen.

9 MR. SCROGGINS: He's not able to find semen.  
10 There could not be any testimony that there was semen,  
11 because that test will not produce that result.

12 MRS. BARNETT: Can I interject something. What  
13 he did testify to, Judge, as I recall, was that he  
14 found presence of acid phosphatase, which indicates  
15 semen. What Dwight is saying, he cannot run a test  
16 for semen. He tested for acid phosphatase, which  
17 indicated semen.

18 THE COURT: Oh. I thought acid phosphatase was  
19 what he put on there.

20 MRS. BARNETT: No; he found acid phosphatase.

21 THE COURT: Oh; he found acid phosphatase.

22 MRS. BARNETT: Which indicates semen.

23 THE COURT: Well, I just didn't understand.

24 MR. SCROGGINS: Acid phosphatase is present in  
25 all samples. What he does, he conducts a test to

1           determine the level, and if it's an elevated level,  
2           then it indicates the possibility of the presence of  
3           semen.

4           THE COURT: Is that what he said was indicated  
5           here?

6           MR. SCROGGINS: I believe all he testified to--  
7           I don't even recall for sure he testified there was  
8           an elevated level.

9           THE COURT: I don't remember anything about an  
10          elevated level. As long as everybody is-- I'm not  
11          trying to tell anybody how to run their case. I just  
12          want to be sure, if there's any argument later on, I  
13          know what the situation was. So as I understand, his  
14          testimony is that he took a swab and he looked for  
15          semen with this acid phosphatase test, and that's all  
16          he said.

17          MRS. BARNETT: Well, I want to just indicate that  
18          he tested for acid phosphatase, which I believe he  
19          then testified it indicated the presence of semen. He  
20          didn't use the words "high level."

21          THE COURT: Well, then, you better get it clear  
22          so we won't have an argument in front of the jury. If  
23          you want to go back and find out; that's all I say.  
24          If there's a misunderstanding between the two of you  
25          about what was said, I can't rule it because I don't

1 know.

2 MR. SCROGGINS: Well, as far as that goes, the  
3 jury can remember what they can remember.

4 THE COURT: Well, it's not a good idea. If we  
5 know about it ahead of time, then it's better to get  
6 it squared up. So straighten it out, whether it is or  
7 not, if you can't agree between the two of you.

8  
9 (Proceedings returned to Open Court.)

10

11 REDIRECT EXAMINATION BY MRS. BARNETT:

12 Q Mr. Booth, quite sometime ago you were testifying with re-  
13 gard to State's Exhibit No. 25-G. I would doubt that that's  
14 still in front of you, or is it?

15 A Okay.

16 Q I believe you stated on examination that you had checked  
17 that exhibit for the presence of a chemical, is that  
18 correct?

19 A Yes; this is the vaginal swab.

20 Q As you were reviewing the vaginal swab and checking for the  
21 presence of the chemical, what chemical was it that you  
22 found?

23 A Well, it had elevated levels of acid phosphatase, which  
24 indicates semen.

25 Q When you say elevated levels indicating semen, are you

1 talking about a sliding scale; once it goes so high, you  
2 conclude that semen is present?

3 A That's correct.

4 Q And in this particular instance, on State's Exhibit 25-G,  
5 did the level go high enough to indicate to you that there  
6 was semen?

7 A That's correct.

8 Q Mr. Booth, switching topics here for a moment.

9 A Okay.

10 Q With regard to the examination of the blood stain that you  
11 did on the jacket and the sheet and the shirt--

12 A I didn't collect any on the sheet.

13 Q I know; I keep saying that. I'm sorry. On the jacket and  
14 on the shirt--

15 A The pair of pants.

16 Q And the pants, denim pants. You stated that you did three  
17 blood groupings on those?

18 A That's correct.

19 Q And the reason that you did not pursue further blood group-  
20 ings, I'm not sure I understand. Can you be specific about  
21 that?

22 A Well, the stains that were there were not conducive to  
23 having successful groupings on other genetic markers.

24 Q When you say they are not conducive, are you talking about  
25 because of the small size that is the very nature of the

1 stain, or what are you saying?

2 A Well, some of them were small. And the others were smears.

3 Since they were smears, you have to concentrate up the

4 blood stain. And when you do that, even though the stain

5 is over a large area, you have really got a small amount of

6 blood. That's what I meant.

7 Q The bottom line then is you only got a little bit to work

8 with?

9 A Right. That's correct.

10 Q I may have misunderstood something on Mr. Scroggins' cross-

11 examination. When you were discussing further testing of

12 Eric Massey's blood, did you indicate that you had done

13 some further testing on his whole blood?

14 A Since I had his standard in the laboratory, I added him to

15 my population studies. These are additional groupings,

16 which I could have done on the stains if I had enough blood

17 on the stains. I just put it in my notebook. I really

18 didn't write a report on it.

19 Q It was brought out that [REDACTED] blood and Eric's

20 blood both contained two common groupings, the ABO--

21 A They have two groupings in common.

22 Q Excuse me; they have two groupings in common. Their ABO

23 is O?

24 A That's correct.

25 Q Their PGM is different?

1 A That's correct.

2 Q And their GC is the same?

3 A That's correct.

4 Q With the third factor of the PGM being different, is it  
5 possible to mistake those group types, one for the other?

6 A No, it's not.

7 MRS. BARNETT: I have nothing further for this  
8 witness.

9 MR. SCROGGINS: I have a couple additional ques-  
10 tions.

11 THE COURT: Sure.

12

13 RECROSS-EXAMINATION BY MR. SCROGGINS:

14 Q Frank, on the last question, you were asked was it possible  
15 for you to mistake those two blood samples?

16 A Yeah.

17 Q In reference to that, you can testify in your expert  
18 opinion, if I understand correctly, that the blood sample  
19 that was on the fly of the pants was not Eric's?

20 A That's correct.

21 Q You cannot testify that the blood sample on the fly of the  
22 pants was [REDACTED]?

23 A That's also correct.

24 MR. SCROGGINS: Thank you.

25

1 REDIRECT EXAMINATION BY MRS. BARNETT:

2 Q Can you testify that the blood sample that you obtained on  
3 the denim pants and the shirt and-- I'm sorry; the third  
4 item, what was it?

5 A It was a jacket.

6 Q And the jacket, the black jacket. Can you state in your  
7 expert opinion as to whether those particular blood stains  
8 are indistinguishable from [REDACTED] blood?

9 A They have all the groups in common.

10 MRS. BARNETT: Thank you.

11 THE COURT: You mean those three groups in common?

12 THE WITNESS: That's what I meant.

13 MR. SCROGGINS: Judge, I need one more question.

14 THE COURT: Okay; but let's narrow it down.

15

16 RECROSS EXAMINATION BY MR. SCROGGINS:

17 Q Frank, you're not saying that the blood samples on those  
18 different items came from the same source; you can't say  
19 that?

20 A No; I'm not saying that either. I'm just saying all the  
21 blood groups that I determined are in common. They have  
22 the same groups in common. They could have come from  
23 different people altogether.

24 Q They could have come from different people?

25 A Sure.

1 Q They could have come at different times?

2 A That's a possibility.

3 Q There's a large population of people out there?

4 A Right. But all of them would have to be the same blood  
5 grouping.

6 Q Those three you testified about?

7 A Which would be roughly between four and five percent of  
8 the population.

9 Q Between four and five percent of the population of the  
10 entire world?

11 A Anybody that can bleed.

12 THE COURT: All right; I think we've covered the  
13 subject. You can be excused.

14 (Witness excused.)

15 (The following proceedings were had  
16 outside the hearing of the jury:)

17  
18 MRS. BARNETT: Your Honor, I may still have a witness out  
19 there, but in the meantime I move for the admission of certain  
20 exhibits. No. 30 and 31, pubic hair and head hairs of the  
21 defendant.

22 THE COURT: Any objection?

23 MR. SCROGGINS: Those are the ones that are inconclusive;  
24 therefore, they're irrelevant and immaterial.

25 MRS. BARNETT: He used them in the process of comparing.

1 THE COURT: Is that the only objection you have? They have  
2 been referred to. I don't know what they're going to do with  
3 them. He said that's the one he got-- Well, the head hair  
4 wasn't inconclusive; he just didn't find any but he examined it,  
5 isn't that it?

6 MR. SCROGGINS: But it's irrelevant, if he looked at it and  
7 he found nothing that--

8 THE COURT: Well, that objection is overruled. Have you  
9 got any other objections?

10 MR. SCROGGINS: I would still have the same foundational  
11 objection that I have stated.

12 THE COURT: Isn't this the one this man Williams is supposed  
13 to come and testify about?

14 MRS. BARNETT: No. On 31, it's not Williams. We have to  
15 go back to the 40's for Williams.

16 THE COURT: All right; it will be admitted then.

17 MRS. BARNETT: 30 and 31?

18 THE COURT: Yes.

19 MRS. BARNETT: Then I move for the admission of 31-A through  
20 31-D, the additional hairs from Eric Massey that were submitted  
21 in the original November 20th submission that the witness testi-  
22 fied he examined and compared.

23 THE COURT: What he said he didn't find anything from.

24 MR. SCROGGINS: Same objections.

25 THE COURT: Same objections, and they are overruled.

1 They'll be admitted.

2 Okay; what was No. 32?

3 MRS. BARNETT: I didn't record that. We were trying to  
4 find it last night.

5 MR. SCROGGINS: Judge, so the record is clear on those  
6 exhibits that we're now talking about, 30, 31, 31-A through  
7 31-D, my objection is as to foundation and as to chain of  
8 custody on those, and also as to relevancy and materiality.

9 THE COURT: All right; that's overruled.

10 MRS. BARNETT: I'll next move for the admission of State's  
11 Exhibit 25-B, 25-E, 25-G, 25-H,--

12 THE COURT: Wait a minute; you're asking for 25-B?

13 MRS. BARNETT: -B, which is the blood and saliva stains.  
14 That's 25-B. I'm asking for those. I'm asking for 25-G, which  
15 is the vaginal swab; 25-H, which is the vaginal smear or slide,  
16 it's been referred to both ways; 25-E, which is head hair from  
17 Opal; and 25-I, which is the pubic hair sample from Opal.

18 THE COURT: All right.

19 MR. SCROGGINS: The same objection as to chain of custody  
20 on them, and objection as to foundation.

21 THE COURT: Those objections are overruled. I don't know  
22 how relevant they are.

23 MR. SCROGGINS: Also object as to relevancy and materiality.

24 THE COURT: They'll be received. I don't understand what  
25 you're going to do with them, because they didn't use-- Well,

1 the swab and the slide they did. All right; let it go in. The  
2 saliva sample, nobody ever talked about that.

3 MRS. BARNETT: No.

4 THE COURT: But you're not offering -D, the fingernail  
5 scrapings?

6 MRS. BARNETT: No. Nor -C, the left nail scrapings. So  
7 we have 25-B, -G, -H, -E and -I?

8 THE COURT: Yes.

9 MRS. BARNETT: Thank you. I'm not offering 45 or 46, and  
10 I want to inquire about 38 and 39, according to the Court's  
11 records?

12 THE COURT: I don't have any 38 and 39? I got 36, 37, 32,  
13 34, 35 and bunch of 40's.

14 THE REPORTER: I believe 35 to 39 were photographs that you  
15 took back, that you asked me to cross out the exhibit numbers.

16 MRS. BARNETT: Oh; that's what happened.

17 MR. SCROGGINS: Photographs I believe that the officer  
18 could not testify as being taken by him.

19 MRS. BARNETT: That's the one you refused, 34. Just for  
20 purposes of clarity, could the Court take a minute and specify  
21 the exhibits, because I'm getting ready to close the case.

22 THE COURT: All right.

23 MRS. BARNETT: Exhibit No. 1, I show offered and received,  
24 a picture of the garage. Exhibit No. 2, I show offered and re-  
25 ceived, a picture of the back door area. Exhibit No. 3, I show

1 offered and received, Opal's coat.

2 MR. SCROGGINS: Could we hold one second to allow me to get  
3 my other sheet.

4 THE COURT: All right.

5 MRS. BARNETT: Exhibit No. 4 is just a sack, I show offered  
6 and received. 4-B, a housecoat, I show offered and received.  
7 No. 5, a small sack, I show offered and received. A gown, 5-A,  
8 I show offered and received. A picture of the divan, offered  
9 and received. A bedroom picture, No. 7, offered and received.  
10 Exhibit 8-A, a multi-colored top sheet, I show offered and re-  
11 ceived. No. 9 is a picture of the phone with blood on it, I  
12 show offered and received. No. 10 wasn't offered. 10-A, Eric's  
13 coat, I show offered and received. 11 through 15 are pictures  
14 of [REDACTED] at the hospital, I show offered and received.

15 Later on I show 10-B and 10-C, stocking cap and glove, both  
16 being offered and received. The next thing I show being offered  
17 and received, skipping over No. 16, is No. 17, which is the  
18 telephone calling card. 18, 19 and 20, I do not show offered or  
19 received.

20 THE COURT: That's right.

21 MRS. BARNETT: Eric's bluish-purple shirt, Exhibit No. 21,  
22 I show offered and received. Sweatpants and denim pants, 22 and  
23 23, I show offered and received. Exhibit 24, I show the defen-  
24 dant identified it, and it was not offered. Then we just went  
25 through 25 to 29.

1 THE COURT: Well, that's a defendant's exhibit. He never  
2 offered it.

3 MRS. BARNETT: Right. And I show 25-B, 25-E, 25-G, 25-H  
4 and 25-I offered and received. Exhibit 29 is the next exhibit  
5 I show offered and received.

6 THE COURT: Well, I got 26 in without any objection; then  
7 27 is in without any objection; 28 is in without any objection.

8 MRS. BARNETT: What was 28?

9 THE COURT: The evidence bags.

10 MR. SCROGGINS: It's a sack.

11 MRS. BARNETT: Okay. Then 29 is in, the screwdriver. Then  
12 the pubic hair of the defendant, No. 30.

13 THE COURT: That may have been a picture, 29-A, wasn't it?

14 MR. SCROGGINS: 29 is a box; 29-A is the screwdriver. Was  
15 29 offered, the box?

16 THE COURT: That's what I got; offered and no objection and  
17 received.

18 MRS. BARNETT: Then 31, 31-A, 31-B, 31-C, 31-D, I show  
19 offered and received.

20 THE COURT: Yes.

21 MRS. BARNETT: No. 33, I show offered and received. 32, I  
22 don't have.

23 THE COURT: I don't have a 32. I just put it down; maybe I  
24 just thought it was coming, I don't know.

25 Wasn't there a picture that came in of the bedroom area

1 with the screwdriver showing?

2 MRS. BARNETT: That's was No. 33, the picture of the screw-  
3 driver in the bedroom area.

4 MR. SCROGGINS: 32 was a picture of some type.

5 THE COURT: I see; okay.

6 MRS. BARNETT: It wasn't offered.

7 THE COURT: I just got down that's where it was found.

8 MRS. BARNETT: The next item I show offered and received is  
9 No. 35, which is a picture of the crime scene; 36, a picture of  
10 the crime scene; and 37, a picture of the crime scene. I don't  
11 have any notations for Exhibits 38 or 39.

12 THE COURT: I don't have either.

13 MRS. BARNETT: 40 and 40-A and 40-B, I show offered and  
14 received, the gold certificate and silver certificate. No. 41,  
15 I show offered and received; 42, I show offered and received,  
16 both blood samples of [REDACTED]. No. 43 and 44 are blood  
17 samples from Eric Massey, I show offered and received. 45 and  
18 46 were never offered. 47, 48 and 49 have not yet been offered  
19 but they've been referred to.

20 THE COURT: That's right; that's what I show.

21 MRS. BARNETT: I just wanted to check.

22 I have one more witness.

23 THE COURT: All right.

24

(Proceedings returned to Open Court.)

25

1 JOHN WILLIAMS, having been previously sworn, testified:

2 DIRECT EXAMINATION BY MRS. BARNETT:

3 Q State your name again for the record?

4 A John F. Williams, Jr.

5 Q Did you testify here earlier today?

6 A Yes, I did.

7 Q Do you consider yourself still to be under oath?

8 A Yes, I do.

9 Q I'd like to show you State's Exhibit 47, 48 and 49. Take  
10 a look at those exhibits.

11 Can you identify those items?

12 A Yes; these are the envelopes that I placed the pubic hair  
13 standards that were collected from Eric Massey on 4-8-87.  
14 They still have my seal on it.

15 Q Is the condition of those envelopes now the same as it was  
16 when you first had them?

17 A There are some additional seals on them that appear to have  
18 been put by some other individuals, and some additional  
19 numbers.

20 MRS. BARNETT: No further questions. I move for  
21 the admission of 47, 48 and 49.

22 MR. SCROGGINS: May I voir dire the witness?

23 THE COURT: All right.

24

25

1 VOIR DIRE EXAMINATION BY MR. SCROGGINS:

2 Q John, in reference to those, where did you place them--  
3 What did you do with the envelopes after you placed the  
4 items in the envelopes?

5 A I handed them to Officer Timothy Walden in the evidence  
6 office.

7 Q Did you ever see them again after that?

8 A No, sir. This is the first time I've seen them since I  
9 turned them in to him.

10 MR. SCROGGINS: Objection on foundation and  
11 chain of custody, your Honor.

12 THE COURT: Overruled; they will be received.

13 (Witness excused.)  
14

15 MR. SCROGGINS: Judge, may we approach?

16 THE COURT: Yes.

17 (Conference between counsel and the  
18 Court off the record.)  
19

20 THE COURT: All right; has the state rested?

21 MRS. BARNETT: The state does rest.

22 THE COURT: All right. Ladies and gentlemen, that com-  
23 pletes the state's evidence, and the defendant has some evidence  
24 that's not going to take an awful long time. We want to get as  
25 much done as we can. There's no question we're not going to