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APPELLATE COURT NO. _____
IN THE COURT OF APPEALS
OF THE STATE OF TEXAS

14-86-080 CR
FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
APR 16 1986
MARY JANE SMART
CLERK

ALPHONSE NORRIS, JR.,
Appellant,
VS.
THE STATE OF TEXAS,
Appellee.

APPEAL FROM 230TH DISTRICT COURT
HARRIS COUNTY, TEXAS
Judge Joe Kegans, Presiding

STATEMENT OF FACTS
PUNISHMENT HEARING

Bella Jo Fisher
Official Court Reporter
230th District Court
Harris County, Texas

FILED
MARY HANDE
District Clerk
MAR 12 1986
Harris County, Texas
[Signature]
County

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the case. Please be back at 1:00 o'clock.

(Whereupon, the jury leaves the courtroom.)

THE COURT: All right, Counsel, 1:00
o'clock. You're at ease.

You'll need to stay with us.

THE WITNESS: All right, sir.

(Whereupon, a recess was had, at the conclusion of which
the following proceedings were had:)

THE COURT: All right. Theresa, put the
jury in the box, please.

(Whereupon, the jury enters the courtroom at 1:05 p.m.)

THE COURT: Mr. Dies, you may call your
next witness.

MR. DIES: Sandra Browning.

(Whereupon, the witness was sworn by the Clerk of the
Court.)

THE COURT: Please be seated there in the

1 laboratory and sometimes we get samples that were
2 intended to be tested in a hospital laboratory for
3 something and wind up being sent to the crime laboratory
4 by mistake.

5 Q So, you do know that the urine sample could have been
6 tested for alcohol content? Can alcohol --

7 A I know that urine samples can be tested for alcohol
8 content.

9 Q And also for drug contents?

10 A Yes, sir, they can.

11 Q Thank you, sir. I just misunderstood.

12 THE COURT: Is that all of this witness?

13 MR. HOWELL: Pass the witness.

14 THE COURT: All right. May he be
15 excused, Counsel?

16 MR. SILVAS: I have no problem.

17 MR. DIES: Please, Your Honor.

18 THE COURT: All right. You're excused as
19 a witness in this case.

20 MR. HARGROVE: If it please the Court, we
21 may need him after she testifies.

22 THE COURT: All right.

23 Members of the jury, you're recessed for
24 lunch now. Please remember my instructions.
25 Don't talk, read, or listen to anything about

1 A No, sir.

2 Q And persons who might necessarily be involved in rape,
3 don't necessarily have orgasms, do they?

4 A No, sir, they do not.

5 MR. DIES: No further questions, Your
6 Honor.

7 THE COURT: Anything else, Counsel?

8 MR. HOWELL: Pass the witness, Your
9 Honor.

10 THE COURT: All right. May this witness
11 be excused?

12 MR. SILVAS: I have one more question.
13 I'm sorry, Your Honor.

14 THE COURT: Ask it.

15

16 FURTHER RECROSS-EXAMINATION

17 BY MR. SILVAS:

18 Q Mr. Waller, sir, I have a note -- and, please, correct
19 me if I'm wrong -- you stated that the urine sample that
20 was sent to you-all, you didn't know what it could be
21 tested for?

22 A What would we be expected to find in it. If I may give
23 a little word of explanation, these rape kits -- samples
24 are taken basically for two purposes. One is for
25 medical purposes and a second to examine by the crime

1 A No, sir.

2 Q Now, when sperm dies, it doesn't disappear right away,
3 does it?

4 A No, sir, it does not.

5 Q It gradually degenerates, would that be true?

6 A Yes, sir.

7 Q And we found whole spermatozoa on the cervical smears,
8 did we not?

9 MR. HOWELL: Your Honor, again I'm going
10 to object to Counsel's unsworn testimony.

11 MR. DIES: Your Honor, it's contained in
12 the report; and he's testified. I'm trying to
13 clarify matters.

14 MR. HOWELL: Your Honor, he's
15 cross-examining his own witness now.

16 THE COURT: All right. Don't lead the
17 witness, and let's don't ask repetitious
18 questions. Let's move on.

19 Q (By Mr. Dies) With regard to deposits of sperm by men,
20 we don't all leave the same quantity for whatever
21 reason; is that correct?

22 A That's correct.

23 Q And as you said, there does not have to be ejaculation
24 or orgasm or seminal fluid to lead into a cavity; is
25 that correct?

1 leading.

2 Q (By Mr. Dies) Would you tell the jury, then, how you
3 determined that Roxanna had an anal swab?

4 A By examining the items there -- perhaps, I ought to
5 bring something else up at this time. There in that
6 rape kit there was a set of notes that were made and
7 there were some list of samples and there were some
8 numbers coded to that examination. If you look at that,
9 there are some numbers by that and those numbers are
10 what correspond to the numbers on the various items and
11 her notes state that the swab which we assume to be the
12 anal swab just had a notation of No. 10 on it.

13 Q So that Roxanna apparently did receive a rectal or anal
14 swab?

15 A Correct.

16 Q From her notes?

17 MR. HOWELL: Your Honor, again this is
18 calling for a conclusion upon this witness's
19 part.

20 THE COURT: Overruled.

21 Q (By Mr. Dies) Would that be correct, then?

22 A Yes, sir, that is.

23 Q All right. So, you're not telling the jury you're
24 positive she didn't get an anal swab. You're not saying
25 that under oath, are you?

1 What's in Roxanna's report that he supervised
2 I have no quarrel with; but him saying what's
3 in Roxanna's mind, I feel that witness is not
4 competent to determine what was in her mind
5 when she wrote this report.

6 THE COURT: All right. That part of the
7 answer, sustain.

8 Q (By Mr. Dies) Let me rephrase the question.

9 A Okay.

10 Q You may presume as fact that an anal swab was taken, all
11 right?

12 A All right, sir.

13 Q Now, you and I sat down together; and we went through
14 all of the swabs, did we not?

15 A Yes, sir, we did.

16 Q And we correlated the swabs to Roxanna's report, swabs
17 and smears, did we not?

18 A Yes, sir, we did.

19 Q And we came up with some one swab, did we not, that
20 pertained by process of elimination to Roxanna's report
21 an anal swab, did we not.

22 MR. HOWELL: Your Honor, I'm going to
23 object to the unsworn testimony of the State's
24 attorney and ask that he not lead his witness.

25 THE COURT: All right. Sustain. It's

1 Q Right. And as I understand it -- and, please, correct
2 me if I'm wrong, sir -- seminal fluid lubricates the
3 tracts, does it not, also?

4 A Yes, sir, it does.

5 Q As a function of the body of nature that it lubricates.
6 And in that context, if there are more repetitive acts,
7 if the act occurs more than one time, then the chances
8 of these tests would be increased on the positive side,
9 would they not?

10 A Yes, sir.

11 MR. SILVAS: No further questions.

12 THE COURT: Anything else?

13 MR. DIES: Yes, Your Honor. I have to
14 redirect some areas, if it please, Your Honor.

15 THE COURT: All right. Go ahead.

16
17 REDIRECT EXAMINATION

18 BY MR. DIES:

19 Q I believe you testified that you don't know if there is
20 an anal swab present; is that correct? Is that what you
21 said?

22 A What we -- there is -- in Roxanna's mind, the sample was
23 not labeled specifically.

24 MR. HOWELL: Your Honor, I'm going to
25 object to what's in Roxanna's mind now.

1 perhaps, like to point out that it was about 18 days
2 before these got to the laboratory for testing, and it
3 could have been some decomposition with time.

4 Q This in your opinion as an expert, this is basically a
5 negative report, is it not?

6 A We did find --

7 Q I asked you to answer the question, sir. In your
8 experience as an expert, is this not basically a
9 negative finding and report?

10 A No, sir, it is not.

11 Q It is not a negative report?

12 A No, sir.

13 MR. HOWELL: Pass the witness.

14 THE COURT: Any further questions?

15 MR. SILVAS: Yes, Your Honor.

16

17 RECROSS-EXAMINATION

18 BY MR. SILVAS:

19 Q Mr. Walker -- Waller, excuse me, sir. With regard to
20 the seminal fluid, I believe I heard you state that
21 seminal fluid only comes from ejaculation. Is that what
22 you stated, sir?

23 A I believe that's what I stated. It was not entirely
24 correct because seminal fluid does -- some of it comes
25 out or is secreted before or during the sex act.

1 Honor, to assume his hypothetical. The victim
2 has not testified specifically with regard to
3 any of the facts that he has substantiated at
4 this time, Your Honor.

5 MR. HOWELL: Your Honor, --

6 MR. DIES: Neither has there been a
7 specific time mentioned with regard to the
8 time of the entry of any seminal fluid or
9 sperm into the cavity of Sandra Lynn Browning
10 and I would object to the question on the
11 basis that he is assuming facts not yet into
12 evidence, Your Honor.

13 MR. HOWELL: Your Honor, this man is
14 qualified as an expert.

15 THE COURT: I'll go ahead and permit the
16 question. Let's move along.

17 MR. HOWELL: Yes, Your Honor.

18 A Would you please restate the question?

19 Q (By Mr. Howell) Yes, sir. All right. If this vaginal
20 swab and the solution was done within four hours after
21 the alleged attack took place, should not a seminal
22 fluid have had a much higher degree than listed here in
23 your report if there had been no action taken by the
24 woman to remove any of the seminal fluid?

25 A What we've done is reported what we found. I would,

1 Q Yes, sir. Let's -- did you not say there was one part
2 of seminal fluid to 1,020 parts; and that was very
3 significant in amount?

4 A Yes, sir, it was.

5 Q So, you could have run some tests, couldn't you?

6 A I believe that that level is significant in that it
7 shows that there is seminal fluid, but it's really not
8 enough to test for the blood group substances.

9 Q All right. Seminal fluid is -- leaves the body through
10 various excretion processes; isn't that true?

11 A Seminal fluid comes from ejaculation.

12 Q That's right. And if a person -- woman is ejaculated
13 into, some of the seminal fluid will be there for a
14 short period of time and it will remain unless she takes
15 other measures before it leaves her body; is this
16 correct?

17 A Yes, sir, it will remain.

18 Q So that if someone had been raped four -- if the victim
19 states that she had been raped four hours prior to, or
20 less, prior to this time, then should there not have
21 been -- and had not taken any means to remove the
22 seminal fluid or sperm -- should there not have been a
23 large amount of seminal fluid and sperm?

24 MR. DIES: I need to object. Counsel is
25 interjecting facts not yet in evidence, Your

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1 explain that to the jury?

2 A Secretor fluid. People have different types of blood.
3 We're all familiar with that. About 80 percent of the
4 people, their blood group substances are found in their
5 other body fluids; that is, such as perspiration,
6 saliva, seminal fluid, and so that's really what they
7 mean by secretor.

8 Q Can you examine the secretor fluid and seminal fluid and
9 tell whether it's the same?

10 A You can test seminal fluid for a type.

11 Q Okay. And then check an individual and compare it,
12 right?

13 A Yes, sir, it can.

14 Q Did you get any samples to check?

15 A Not to test specifically for that. What Roxanna would
16 have done -- or our normal procedure is we will test
17 swabs and smears to determine if we can try to get a
18 type off of them; and that really indicates that the
19 seminal fluid if there is a high enough concentration of
20 seminal fluid, then you can test for it. If it is a
21 very small amount of seminal fluid, you just would not
22 be able to pick up any blood group substances.

23 Q Okay. Well, in response to direct examination, didn't
24 you say you had a very high amount of seminal fluid?

25 A I'm not sure whether I said that or not. I may have.

1 and rather than just a little bit of mold on there?

2 A Apparently not, sir.

3 Q Apparently not. Is there any mold on the crotch of
4 those pants?

5 A I really don't see any on there.

6 Q Okay. All right. Now, I want to ask you: Could those
7 pants have changed back from November the 12th of 1984,
8 when they were examined and it was noted that they were
9 very molded and now they're not? Could that have
10 changed?

11 A If they were molded then, I would still expect to find
12 some mold on them. She did -- she just mentioned that
13 there was mold -- that there was mold on them -- not
14 that they were completely covered.

15 Q Does it say a little bit of mold or a whole lot of mold?

16 A She just says "molded."

17 Q Did you -- okay. Could they be examined today to find
18 seminal fluid on them?

19 A They could be tested.

20 Q And if there was seminal fluid, would it show up still?

21 A Under ideal conditions that if it were dried quickly,
22 had not been moldy, yes, it could be found. Considering
23 these since they were damp and did have mold on them,
24 possibly not.

25 Q Okay. Now, you talk about secretor fluid. Would you

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1 likelihood that whatever it was had been decomposed.
2 Blood and seminal fluid and things like this are
3 biological that they do decompose with bacteria, mold.
4 They will just destroy it.

5 Q Okay. Can you detect mold and everything on those
6 things that were sealed up with the naked eye?

7 A You mean these other items?

8 Q No, I mean the pants, sir.

9 A I really haven't looked at the pants.

10 Q Would you look at them?

11

12 (Whereupon, the witness examines the blue jeans.)

13

14 A There is some spots on here which could be mold.

15 Q Could be mold at this time; is that correct?

16 A Yes, sir.

17 Q Now, we are now on April the 17th of 1985; is this
18 correct?

19 A Yes, sir, it is.

20 Q This offense occurred October the 24th of 1984, and
21 these pants were examined by your office on the 12th of
22 November of '84; is this correct?

23 A Yes, sir.

24 Q And if there was mold on them then, wouldn't those pants
25 be completely covered with mold some seven months later

1 Q All right. What has been erased out underneath that?

2 A I really can't make it out.

3 Q Something has been erased though, right?

4 A Something, no s- --

5 Q No seminal fluid, no sperm?

6 A Perhaps sperm. I just really can't make it out.

7 Q But it begins with an "s," right?

8 A Yes, sir.

9 Q And it's been erased, hasn't it?

10 A Yes, sir, it is.

11 Q And that test was negative, wasn't it?

12 A I really don't know, sir. She obviously started to

13 write something down in her notes and then decided not

14 to say it.

15 Q Okay. You found nothing significant on the examination

16 of the blue jeans, did you?

17 A The blue jeans were not examined.

18 Q They were not examined at all?

19 A No, sir. Excuse me, other than just to look at them and

20 make a description of them.

21 Q Could you have examined the blue jeans with various type

22 of tests to determine whether or not there was any blood

23 or seminal stains on said blue jeans?

24 A Yes, sir, you could have done the test. Considering

25 that it was damp and had become moldy is a very good

COPY

1 A I don't know what we would test it for.

2 Q Okay. But it was sent to you?

3 A Yes, sir, it was.

4 Q Okay. Now -- okay, there was a syringe of fluid that
5 was taken from the cervix, was there not?

6 A Yes, sir, there was.

7 Q Now, what fluid would you expect to find in the cervix?

8 A Normally would be vaginal fluid.

9 Q And would it be mixed with anything else in the cervix
10 if a woman had been assaulted?

11 A Yes, sir, possibly seminal fluid.

12 Q And sperm?

13 A Yes, sir, possibly.

14 Q Could you tell me why there was no test ran on the
15 cervical fluid?

16 A It would have been tested for acid phosphatase or sperm
17 and sperm were found on the cervical smears and acid
18 phosphatase was found in the vaginal swab; that is, in
19 the solution of the vaginal swab.

20 Q Well --

21 A And therefore it would be just superfluous.

22 Q It would be superfluous. Would you tell the jury, if
23 you know, since this report was made under your
24 direction, is this correct, in your supervision?

25 A Under my general supervision, yes, sir.

1 made regarding this over on your far right-hand side?

2 A Under --

3 MR. HOWELL: May I approach?

4 A Under "I-N-H-I-B," is that what you're referring?

5 Q No, sir, on the far right-hand side.

6 A Oh.

7 Q Right, over here. Would you read to the jury what that
8 says? (indicating)

9 A Says quote, "may not be anal swab -- is only labeled
10 #10."

11 Q So, when you previously testified that there was blood
12 found on the anal swab, we do not even know whether that
13 was the anal swab, do we?

14 A Yes, sir.

15 Q We do?

16 A Yes, sir, we do not.

17 Q We do not know whether it was the anal swab, do we?

18 A Yes, sir, according to that, there appears to be some
19 doubt.

20 Q There is a doubt, isn't there?

21 A Yes, sir.

22 Q Thank you. All right. May I please see your original?
23 I can't read these.

24 Okay. Is there any reason why the urine was not
25 tested?

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1 A Yes, sir.

2 Q And she's got "wet" underlined; is that correct?

3 A Yes, sir.

4 Q But she doesn't have a question mark behind that one,
5 does she?

6 A No, sir.

7 Q Then what is the significance of the question mark?

8 A I'm really not sure of that.

9 Q Okay. Was this test negative?

10 A Was negative.

11 Q For sperm or seminal fluid?

12 A Yes, sir, it was negative for both sperm and seminal
13 fluid.

14 Q Now, if someone had allegedly been raped and made to
15 engage in anal intercourse and a swab had been taken
16 that was still wet, can you explain why you would find
17 no sperm or no semen.

18 MR. DIES: I need to object. Counsel,
19 again, is posing a hypothetical and assuming
20 facts not in evidence in this particular
21 matter at this time, Your Honor, and is
22 repetitious, Your Honor.

23 THE COURT: Sustained.

24 Q (By Mr. Howell) Now, regarding the box labeled "oral
25 swab" and "anal swab," is there any particular notes

- 1 A No, sir.
- 2 Q Okay. Now -- but it was tested, was it not?
- 3 A Yes, sir.
- 4 Q The oral swab?
- 5 A Yes, sir, it was tested.
- 6 Q What were the results?
- 7 A Negative.
- 8 Q Negative for sperm?
- 9 A Yes, sir.
- 10 Q Negative for seminal fluid?
- 11 A Yes, sir.
- 12 Q All right. Now, let us go down to the anal swab, okay?
- 13 You note on your report there it says, "still wet,"
- 14 doesn't it not?
- 15 A Yes, sir.
- 16 Q Could you tell me the significance of why there is a
- 17 question mark behind that statement written there by
- 18 Roxanna?
- 19 A I assume by that it was either still wet or damp as she
- 20 probably wasn't completely certain of that.
- 21 Q Well, sir, does she not have it underlined as wet, is it
- 22 not underlined?
- 23 A Yes, sir, it is.
- 24 Q And up above it she has oral swab, does she not, and
- 25 she's got in parentheses "still wet"; is that correct?

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1 that not correct?

2 A That is generally correct, sir.

3 Q Well, generally or not, is it correct?

4 A Yes, sir.

5 Q Now, under "I-N-H-I-B," what does that mean? That
6 little marking there? (indicating)

7 A Under the cervical swab?

8 Q Yes, sir.

9 A There is no mark on the original work sheet.

10 MR. HOWELL: May I approach the witness?

11 Q Maybe something got on mine.

12 Now, on the oral swab, if you look at your records,
13 okay, was there anything either seminal fluid or sperm
14 found on the oral swab?

15 A No, sir.

16 Q There was nothing, was there?

17 A No, sir.

18 Q Now, again, if such a test had been made on a victim
19 within three to four hours after the alleged offense
20 took place, there should have been some traces that you
21 could have determined; is this correct?

22 A I'm not sure about that with respect to an oral swab
23 because it could have been washed out by spitting or
24 something like this.

25 Q You're not sure?

1 A Negative, meaning that no sperm were recovered from the
2 cervical swab.

3 Q Was the cervical swab examined for sperm?

4 A Yes, sir, it was. Let me qualify that. The sperm are
5 identified by means of a microscope, and you have to put
6 them on a microscope slide in order to identify them.
7 So, the swab is extracted to remove the sperm cells and
8 then these are placed on a microscope slide and then
9 examined with a microscope.

10 Q Was that done?

11 A Yes, sir, it was.

12 Q Was there cervical -- are you telling me there was
13 cervical smears made off the cervical swab; is this
14 correct?

15 A Yes, sir, we -- well, let me back up. What we did was
16 extract the swab, place the washings on a microscope
17 slide, and examined that for sperm.

18 Q And what did you find?

19 A We did not find any sperm cells.

20 Q Negative?

21 A Yes, sir.

22 Q And if there had been any sperm on that cervical swab
23 even though they had died, you still would have found
24 them on that cervical swab after you transferred it to
25 the cervical smear and put it under the microscope, is

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1 Q All right.

2 A The reaction of .05 was really determined to be not
3 significant.

4 Q Not significant?

5 A Yes, sir.

6 Q That would not be something that you would expect to
7 find on a -- after examining a woman who had been
8 allegedly raped four hours prior; is that correct? You
9 would expect to find more of the acid phosphatase,
10 right?

11 A Yes, sir, you would.

12 Q You did not find that, did you?

13 A No, sir, we did not.

14 Q Okay. Let's go on to the next line, the next block
15 afterwards. That is semen dilution?

16 A Yes, sir.

17 Q What does that mean?

18 A Negative. Means negative.

19 Q What does "semen dilution" mean for the jury?

20 A All right. The semen dilution means how concentrated is
21 the seminal fluid, you know, how strong is it.

22 Q And it was?

23 A Essentially none.

24 Q None. Thank you. Let's go to the sperm. What does
25 your report show there?

- 1 A Means negative.
- 2 Q Means what?
- 3 A Negative. B-E-N-Z is the test for blood, the benzene
4 test.
- 5 Q That was negative?
- 6 A Yes, sir.
- 7 Q Then let's go across your report a little further under
8 "A-P." What does it say?
- 9 A Positive, very weak.
- 10 Q What does "A-P" stand for?
- 11 A Acid phosphatase.
- 12 Q You said very weak?
- 13 A Yes, sir.
- 14 Q Explain that. Does that mean the same as a trace?
- 15 A Yes, sir, basically. She did a test for acid
16 phosphatase. She got a very weak reaction, and she just
17 noted that it was very weak.
- 18 Q Which was a trace, right?
- 19 A Yes, sir.
- 20 Q And she noted that. All right. Now, let's go down to
21 the assay "AP/P30." What is that figure represent?
- 22 A All right. This is a test which is used to try to
23 determine how much acid phosphatase is present. That is
24 a quantitative analysis. The number there represents
25 the amount of how strong the reaction was.

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1 A I would say -- if you ask me for a figure -- I would say
2 a maximum of 12 hours.

3 Q Minimum?

4 A Being the sperm start dying within a few minutes.

5 Q But would after an ejaculation into a woman's vagina,
6 you are saying that there should be some sperm alive
7 found within 12 hours?

8 A Yes, sir, under normal conditions.

9 Q So, if the victim was examined on 10/25/84 at
10 approximately 1:40 a.m. and the alleged offense occurred
11 somewhere between 9:30 and say 11:00 o'clock, there
12 should have been evidence of sperm found in some of
13 these areas, should there not?

14 A Yes, sir.

15 Q Was there?

16 A We found on the cervical smears.

17 Q All right.

18 A Sperm cells were found on the cervical smears.

19 Q All right. Now, let us go down to the cervical swab,
20 okay? Was this cervical swab in solution, too?

21 A The notes do not say that it was in solution; therefore,
22 I assume that it was not.

23 Q All right. Then let's read across your report. First
24 down the line under "B-E-N-Z." What is that marking
25 mean?

1 saline solution. That is dilute salt water.

2 Q Is there anything -- well, is there anything on your
3 report that tells you what the solution was?

4 A No, sir.

5 Q Don't you think that's rather significant since it was
6 the solution that was tested?

7 A No, sir, it was -- the normal thing is we assume that it
8 was just saline or water.

9 Q Well, do you know which solution it was?

10 A No, sir, I do not.

11 Q Well, saline is a salt-type water?

12 A Yes, sir.

13 Q And does saline have any chemical affects on seminal
14 fluid?

15 A No, sir.

16 Q None whatsoever?

17 A No, sir.

18 Q How about water?

19 A No, sir.

20 Q None whatsoever?

21 A No, sir.

22 Q Now, how long does the average, I guess, sperm that has
23 been ejaculated into a vagina live?

24 A A few hours.

25 Q How many hours would you give? Max to mini.

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- 1 A No, sir.
- 2 Q Was there any sperm found on the anal swab?
- 3 A No, sir.
- 4 Q None whatsoever?
- 5 A No, sir.
- 6 Q Okay. Now, you say a trace of acid phos-- something?
- 7 A Phosphatase.
- 8 Q Phosphatase, which is a constituent of seminal fluid,
9 was found on the vaginal swab in solution; is this
10 correct?
- 11 A Yes, sir.
- 12 Q But there is no way scientifically, is there, Doctor --
13 or Mr. Chemist -- that you can say when that seminal
14 fluid was placed into the vaginal area, can you?
- 15 A You cannot be very accurate with respect to -- you can
16 say it was within several hours. You can't really pin
17 it down very much, but you can exclude an event as
18 happening a week before or several days before.
- 19 Q Okay. How about one day before?
- 20 A I would not expect it to be found.
- 21 Q Would not expect it. Now, the vaginal swab was in a
22 solution, wasn't it?
- 23 A Yes, sir, it was.
- 24 Q Tell me what kind of solution it was in?
- 25 A I assume that it was water or, perhaps, what is called

1 That assumes facts not put into evidence; and
2 secondly, he is asking the witness to testify
3 in an area that he has already indicated he is
4 not an expert to do so, Your Honor.

5 THE COURT: All right. Sustain the
6 objection.

7 Q (By Mr. Howell) Now, regarding the seminal fluid -- if
8 I'm pronouncing it right -- and the sperm, there were
9 no -- strike that.

10 Even after a sperm has died, during your
11 examination you could detect whether or not there was
12 sperm in the swabs that were sent to you; is this
13 correct?

14 A Yes, sir, you can.

15 Q So, is it your testimony that no sperm alive or dead
16 were found on the vaginal swab? There was no sperm
17 whatsoever; is this correct?

18 A Yes, sir, that is correct.

19 Q Was there any sperm on the cervical swab?

20 A No, sir.

21 Q None whatsoever?

22 A No, sir.

23 Q Was there any sperm on the oral swab?

24 A No, sir.

25 Q None whatsoever?

1 A Yes, sir.

2 Q And examined those swabs. Is it not -- do you usually
3 not find a lot of blood on the anal swab if it was taken
4 right close to after the alleged crime had been
5 committed?

6 MR. DIES: I need to object, Your Honor,
7 and ask Counsel to qualify what he means by a
8 lot of blood.

9 MR. HOWELL: I'll rephrase it, thank you.

10 Q (By Mr. Howell) You mentioned a trace of blood is
11 present on the anal swab, okay?

12 A Yes, sir.

13 Q What, so the jury knows, is a trace of blood?

14 A That was about enough to determine that there was blood
15 there.

16 Q Period?

17 A Period.

18 Q Nothing else?

19 A Nothing else.

20 Q All right. If a person had allegedly had anal
21 intercourse with a nonconsenting female, would not that
22 cause tearing of the tissues and cause blood in a rather
23 large amount to be on an anal swab?

24 MR. DIES: I need to object at this point
25 in time. Counsel is posing a hypothetical.

1 A I'm qualified as an expert. I'm not all-powerful.

2 Q You're here testifying because you supervise what
3 Roxanna did or was done under your direction?

4 A Yes, sir, that's correct.

5 Q You've performed these tests yourself, haven't you?

6 A I have performed some of these tests.

7 Q All right. Well, is it customary that an oral swab or
8 any of these swabs would still be wet 18 days after an
9 examination?

10 A If they were very wet to start off with, if they were
11 saturated, and were kept in a sealed tube, yes, sir,
12 it's possible.

13 Q If you got the anal swab real wet, would it not be
14 possible to cause a small tear in the anal tissue
15 getting this test, getting this swab?

16 A That would really be a medical thing as far as the
17 doctor doing the examination. That's really outside my
18 field of expertise.

19 Q You have examined many rape kits, have you not?

20 A I have not. I have examined a few, not a whole lot.

21 Q Have you supervised the examination of few or many rape
22 kits?

23 A I would have to say many.

24 Q All right. During the supervision, have you examined
25 swabs that were taken from the anal area?

COPY

1 at 1:40 a.m.? Would that pretty much compute?

2 A Very close to that.

3 Q Okay. Now, are these samples airtight?

4 A I'm not sure whether these --

5 Q Would you examine them, please?

6 A Yes, sir, I will.

7

8 (Whereupon, the witness examines the exhibits.)

9

10 A I believe this cap here -- the one I'm looking at -- if
11 it's pressed down very firmly, it is airtight. It can
12 be left loose so it will not be airtight.

13 Q Do you know how you received it?

14 A No, sir, I do not. It appears that it was sealed up
15 because of the presence -- the way the cap was down, it
16 appears it was sealed up so it would be airtight.

17 Q Okay. If 18 days had passed from the time that the
18 sample was taken until it was sent to you, are you
19 telling this jury based upon your report that an oral
20 swab, the swabs were still wet 18 days after an
21 examination was made? Is that what your conclusions
22 are?

23 A That's what the notes -- Roxanne's notes show that the
24 oral swab was still wet.

25 Q You're an expert, are you not?

1 to believe that it wasn't the victim's pubic hair, did
2 you? Based upon the evidence that was sent to you?

3 A The conclusion is that it very possibly was. You could
4 not say specifically that it came from someone else.

5 Q Were you furnished hair from any other people to
6 examine?

7 A No, sir.

8 Q At all?

9 A Not in this case.

10 Q Okay. Now, this -- you have your report back?

11 A Yes, sir.

12 Q Okay. Just so I can clarify, on the top of your report,
13 this examination that shows was taken October 25th of
14 1984; is this correct?

15 A Yes, sir.

16 Q Now, this is not when you received it, is it?

17 A No, sir, it is not.

18 Q Okay. Your office received it on November the 9th of
19 1984; is this correct?

20 A Yes, sir, that's correct.

21 Q And the testing was started November the 12th of 1984;
22 is this correct?

23 A Yes, sir.

24 Q Would that -- would I be correct that this was 18 days
25 after the samples were taken on October the 25th, 1984,

COPY

1 A I perhaps need to qualify that a little bit.

2 Q Yes, sir.

3 A There were no known pubic hair samples submitted from
4 either of the Defendants or suspect's in the case. So,
5 we really cannot say much. It is always possible that
6 the suspects had similiar pubic hair to the victim.

7 Q Well, sir, now you are an expert, are you not? Are you
8 not an expert?

9 A I'm appearing as an expert.

10 Q All right. Now, are you telling this jury that hair
11 samples from different people match or is each
12 individual hair sample different from someone else's?

13 A There are some people -- okay, hair is not completely
14 unique to an individual. There are some people that
15 have similiar type hair.

16 Q Does a Mexican have similiar type hair to a white?

17 A Some do, yes, sir, some whites.

18 Q Does it go also by the color of the person's hair?

19 A Yes, sir.

20 Q So, a person who was a brunette versus a person who had
21 dark black hair generally their hair samples would not
22 match, would they?

23 A Yes, sir, generally, yes.

24 Q All right. And really what you're saying here is that
25 the pubic hair was similiar and you had no other reason

1 positive for any sperm?

2 A No sperm were -- I should say recovered from the
3 cervical swab because to get the sperm cells off you
4 have to do an extraction process and put them onto a
5 microscope slide and then examine the slide under a
6 microscope. There were none that were recovered from
7 that.

8 Q There were none that were recovered from that?

9 A Yes, sir.

10 Q So, that's why that's the negative?

11 A That's negative. She did not find any.

12 Q All right. Now, there at your laboratory you do not
13 have machines that can test whether or not hair
14 samples -- do you not have certain test machines that
15 you can test hair samples?

16 A All of our hair testing is done using a microscope.
17 That is a visual comparison.

18 Q All right. Now, the report and the information that
19 Roxanna related to you does not lead you to believe that
20 the pubic hair found was anything other than Sandra
21 Browning's, does it?

22 A At this point, no, sir, there is not.

23 Q Okay. So, based upon the report, there was no pubic
24 hairs or anything found that could have come from either
25 of the Defendants?

COPY

1 A No, sir, we do not.

2 Q Okay. Now, in looking over your report, I have a
3 problem with cervical smears. If you'll refer to your
4 report that was found in the -- and where it has a
5 little --

6 MR. HOWELL: May I approach the witness?

7 THE COURT: You may.

8 Q (By Mr. Howell) You don't have your --

9 A No, sir, the jury has it.

10 Q Oh, I'm sorry.

11

12 (Whereupon, Mr. Dies gets exhibits from the jurors and
13 gives them to the witness.)

14

15 Q (By Mr. Howell) Under cervical smears there is some
16 notations made for sperm?

17 A Yes, sir.

18 Q And what do those notations mean?

19 A That means it was positive.

20 Q Then I go down to your cervical swab, okay?

21 A Yes, sir.

22 Q Would the cervical swab contain the same items that was
23 found -- that was put on the cervical -- on the smear?

24 A Possibly.

25 Q Well, sir, was the cervical swab, was that negative or

1 work sheet and the evidence record sheet to
2 the jury?

3 THE COURT: You may.

4 MR. DIES: And, Your Honor, I will pass
5 these to the jury.

6 Q (By Mr. Dies) With regard then to Roxanna Payne's
7 findings, can you tell us, taken as a whole, of what
8 significance what her findings mean?

9 A Sexual activity occurred.

10 MR. DIES: No further questions, Your
11 Honor.

12 THE COURT: Any questions, Mr. Silvas?

13 MR. SILVAS: Yes, sir.

14

15 CROSS-EXAMINATION

16 BY MR. SILVAS:

17 Q Significantly, based on the report that you just given
18 us, Mr. Waller, sexual activity to what area?

19 A Vaginal area.

20 MR. SILVAS: No further questions.

21 THE COURT: Mr. Howell, any questions?

22 MR. HOWELL: Yes, sir, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HOWELL:

25 Q Mr. Waller, does your office also do ballistic testing?

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Mr. Waller can take the original documents
back with him to Corpus Christi.

MR. SILVAS: Do I have the same ones?
Your Honor, may I?

THE COURT: Sure.

MR. HOWELL: Your Honor, I would like, if
possible --

MR. DIES: Let me withdraw that for just
a moment, Your Honor. All I'm asking is that
for purposes of the record at a later time
State's Exhibits --

MR. HOWELL: We have no objection to
that, Your Honor. Right now the Xerox copies
are not that clear.

THE COURT: All right. We'll make good
and correct true copies and substitute them
later.

There being no objection to that, you
will be permitted to do that.

(Whereupon, State's Exhibit Nos. 89 and 90 were
substituted as copies of the original exhibits, Nos. 87
and 88.)

MR. DIES: At this time, may I hand the

1 A Following normal procedure and according to the evidence
2 records sheet, all these items were returned to Freeport
3 Police Department.

4 Q All right.

5 MR. DIES: Then, Your Honor, at this time
6 I would tender and offer into evidence for
7 Counsels' inspection and objection at this
8 time State's Exhibit Nos. 71 --

9 THE WITNESS: I believe I got them out of
10 order.

11 MR. DIES: -- through 83.

12 MR. HOWELL: May I check them?

13 THE COURT: Yes, sir.

14 MR. HOWELL: No objection.

15 MR. SILVAS: I have no objections, Your
16 Honor.

17 THE COURT: All admitted.

18
19 (Whereupon, State's Exhibit Nos. 71 through 83 were
20 offered and received in evidence.)

21
22 MR. DIES: Your Honor, at this time I
23 would ask Counsel for both Defendants to allow
24 me to substitute State's Exhibits 89 and 90 as
25 Xerox copies of the original documents so that

COPY

1 A Just blood. It was not tested for human blood or not
2 because there was simply not enough blood there.

3 Q Not enough, okay. All right.

4 A Continuing on, she did a test for type. There were six
5 examinations made for blood typing. She did tests for
6 seminal stains. Seventeen examinations were made, and
7 there were two hair examinations made.

8 Q All right. With regard to blood that was found on the
9 anal swab that you testified to, all right, for that
10 blood to have been an animal's blood, an animal would
11 have had to have put it there, right, yes, sir, or no,
12 sir?

13 MR. HOWELL: Your Honor, again I'll
14 object to that. That's asking a conclusion
15 upon this witness's part.

16 THE COURT: Sustained.

17 MR. DIES: Your Honor, may I approach the
18 witness?

19 THE COURT: Sure.

20 Q (By Mr. Dies) Do you know what Roxanna did then with
21 all of the items that you have been able to identify and
22 recognize as the items she received and tested from the
23 Freeport Police Department?

24 A Do you mean after the analysis was complete?

25 Q Yes, sir, I'm sorry.

1 in this case; but quite often if we have a case
2 involving blood on a garment or a knife or something
3 like that, it is a question of is it human blood or did
4 it come from some kind of animal. In this case it was
5 not tested for origins. It was obviously human,
6 looked --

7 MR. HOWELL: Your Honor, I'm going to
8 object to that. That's merely conclusions
9 upon this witness or upon his employees.
10 There was no testing made, and he stated a
11 conclusion.

12 THE COURT: All right. I'll sustain
13 that.

14 MR. HOWELL: Thank you. Ask the jury to
15 be instructed to disregard it.

16 THE COURT: Strike it. Members of the
17 jury, please disregard that answer.

18 Q (By Mr. Dies) Let me make certain of something with
19 regard to the question presented regarding blood. You
20 did find -- blood was found on the anal swab, correct?

21 A Yes, sir, it was.

22 Q Okay. Of some type, is that correct, or was it
23 determined to be human blood?

24 A It was just blood.

25 Q Just blood?

COPY

1 have not specifically identified?

2 A All right. Something it was -- note over here, also the
3 kit includes urine sample which was not tested and a
4 syringe of fluid from possibly the cervix. She wasn't
5 really sure of that, and that also was not tested.

6 Q All right. And for purposes of determining what is on
7 her particular report, at the top of the report there
8 are some shorthand renditions, some writings dealing
9 with origin, type, letters S. S. and hair, can you tell
10 us what those refer to?

11 A Yes, sir. We are required to keep records and send off
12 a monthly report every month and it includes the types
13 of tests that were performed and the number of
14 examinations and that's basically notes that she made
15 for the purpose of -- for the logbook of records of
16 examinations performed for our monthly report.

17 Q And for the jury's information, then, in examining the
18 work sheet, can you tell us what the first item would
19 refer to and the number that appears beside it?

20 A All right. These were tests for blood stains, and she
21 noted that she did six tests for blood stains. That is
22 the presence of blood.

23 Q And next item, origin?

24 A That would have been a test of whether or not the blood
25 was of human origin or not. It's not really appropriate

1 A There were some items marked debris from pubic hair, and
2 she found a piece of grass and several grains of what
3 she thought to be [REDACTED].

4 Q All right. And the next item, please, sir?

5 A There were some fingernail scrapings; and she examined
6 those and was not able to come up with anything that
7 would help the case, any kind of what they call
8 significant trace evidence.

9 Q All right. What would have been the next item then
10 appearing on her work sheet?

11 A A cervical swab. That is a swab that was taken of the
12 victim's cervix at the time of the examination. There
13 was no blood on that. However, they did find acid
14 phosphatase, very weak. It was -- would have been --
15 well, it was so weak that it really was negative for
16 seminal fluid. She did not find any sperm on it. That
17 is State's Exhibit No. 80.

18 Q Thank you, sir. And the last item apparently that she
19 received, was she able to make any analysis of that?

20 A That was the blue jeans. Her notes says that the jeans
21 were damp and they were caked inside with red mud and
22 were molded and that they were not examined.

23 Q All right. Do you know or is it reflected on the work
24 sheet if she performed any other analysis with regard to
25 any of the other items that may be before you that you

COPY

1 Q What do you mean by "standard," please, Mr. Waller?

2 A Okay. Let me discuss that one and the next one

3 together. In determining in a rape examination, it is

4 sometimes happens -- and I don't think -- usually but

5 not always -- where you find the male's pubic hair

6 becomes entrapped in the female's pubic hair and so the

7 combing -- the pubic hair of the victim is combed to

8 remove any loose hairs to determine, you know, if,

9 perhaps, there is some of the assailant's hairs there

10 which could be use to identify this assailant and also

11 we get a standard or some known pubic hair samples.

12 These are taken by plucking or by cutting so that when

13 the laboratory gets them, they're able to say, "This is

14 what the victim's pubic hair looks like and these are

15 the loose hairs that we found. Are they the same or did

16 they come from someone else?"

17 Q Apparently Roxanna did such a particular standard to

18 loose hair comparison, apparently?

19 A Yes, sir, she did. She found a -- one loose hair and as

20 far as she was able to determine, it was similiar in

21 appearance to the victim's hair.

22 Q Does that mean conclusively that it was the victim's?

23 A No, sir, it does not.

24 Q What was the next item that she tested then or next

25 significant items she entered on her work sheet?

1 high concentration, low concentration, medium, if you
2 can say something like that?

3 A It is a significant concentration, and it represents
4 sperm. It's much higher than would be noted for vaginal
5 fluid. So, it does represent presence of seminal fluid.

6 Q With regard to the next item, perhaps, that you or items
7 she may have tested, can you locate those for us?

8 A All right. These were some cervical smears. Now, these
9 were smears that were smeared onto the glass slides --
10 were submitted. There were three of them. That is
11 State's Exhibit No. 79. She was able to find sperm on
12 each of those three smears.

13 Q Did she describe the sperm with any particular wording?

14 A She put that there were whole sperm, that the entire
15 sperm cell was found instead of just parts.

16 Q Has that any -- perhaps any particular significance
17 maybe in the viability of the sperm?

18 A No, sir, it's just that sperm is -- especially when it's
19 been dried -- is very fragile. Sometimes the heads
20 break off from the tails and it's very difficult to
21 identify but she was able to find complete and intact
22 spermatozoa.

23 Q What was the next item, then, from her work sheet that
24 she particularly examined and tested?

25 A Apparently was a pubic hair standard.

COPY

1 was torn. It was also used -- the labels also used to
2 seal the cap; and when it was opened, the markings were
3 disturbed.

4 Q Now, this morning you and I worked with each of those
5 particular items, did we not?

6 A Yes, sir, we did.

7 Q And we were able to, by process of elimination, narrow
8 it down to that. We determined that was the particular
9 swab; is that correct?

10 A Yes, sir, we did have a little problem with this one.

11 Q With regard then the testing with that, can you tell us
12 what her results showed?

13 A She did not find any blood. She found acid phosphatase
14 and also she did not find any sperm but she did find
15 acid phosphatase which is the -- acid phosphatase is
16 the -- and the meaning of this really represents seminal
17 fluid.

18 Q Okay. With regard to, perhaps, the amount of percentage
19 found by Roxanna, can you tell us if that may have some
20 significance?

21 A When testing for acid phosphatase, she does an analysis
22 to determine how much there is. The amount that she
23 found was the equivalent of about one part seminal fluid
24 per thousand parts of normal vaginal fluid.

25 Q And I guess in ordinary terms, would you say that's a

1 very high concentrations; and this is one of the tests
2 that is used to determine if an item is seminal stain or
3 seminal fluid or if it is a seminal stain, it is a stain
4 made by seminal fluid.

5 She also tested for the presence of sperm. She did
6 not find any acid phosphatase or any sperm on the oral
7 swab.

8 Q All right. With regard to her work sheet, then, can you
9 tell us the next item and identify it, please, sir, that
10 she may have tested in her analysis with regard to that
11 item?

12 A All right. The next one was an anal swab which is
13 marked as State's Exhibit No. 81. She tested for blood.
14 She found a small amount of blood on it. She tested
15 for -- to determine if it were human blood and there was
16 not enough blood on that to determine whether or not it
17 was human blood. She also tested for the presence of
18 acid phosphatase and for presence of sperm, and she did
19 not find acid phosphatase or sperm on the anal swab.

20 Q But she did find blood?

21 A Yes, sir.

22 Q With regard to the next item, can you tell us what was
23 the next item she tested and her results in that regard?

24 A It was a vaginal swab; and as far as I'm able to
25 determine, it's State's Exhibit No. 78. The label is --

COPY

1 A Type "O" blood.

2 Q What was the next item?

3 A Next item was an oral --

4 Q Excuse me, sir. Would you do something for me, please?
5 Those systems that you specifically referred to, if they
6 will stay, would you put them on top of that little rail
7 just in front of the microphone, if they will stay?

8 A Yes, sir.

9 Q All right. With regard to Roxanna's sexual assault work
10 sheet, then, would you tell us what's the next item that
11 appears she may have tested or attempted to test?

12 A The next item was an oral swab.

13 Q Can you locate that particular item?

14 A Yes, sir. It appears to be No. 75 -- part of the
15 markings on it.

16 Q Okay. State's Exhibit No. 75?

17 A Yes, sir.

18 Q An oral swab. Okay. And can you tell us what, if any,
19 analysis she performed and the results with regard to
20 the oral swab?

21 A All right. She tested this to determine if there was
22 any blood on it, also tested for the presence of acid
23 phosphatase.

24 Acid phosphatase is an enzyme that is present in
25 male seminal fluid. It's an enzyme that is present in

1 Q So, you're able to recognize each of these particular
2 exhibits as being items that Roxanna received for
3 potential or possible testing or analysis because of the
4 numbers that are placed on there or her initials or
5 writing that you recognize; is that correct?

6 A Yes, sir.

7 Q All right. With regard then to each of these particular
8 exhibits, can you tell us if Roxanna did perform some
9 testing for Freeport in connection with these exhibits,
10 yes or no?

11 A Yes, sir, I can.

12 Q Let's take them one at a time then. With regard to
13 State's Exhibit No. 72 -- well, I'll tell you what, why
14 don't you use her sexual assault work sheet, okay, and
15 using her sexual assault work sheet, can you tell the
16 jury what the first kind of test that appears on the
17 sexual assault work sheet, what was it that Roxanna did
18 and can you tell us, perhaps, which of those particular
19 State's Exhibits she tested?

20 A First item listed is a tube of blood which came in the
21 sexual assault kit and it's blood from the victim, Miss
22 [REDACTED]. It's State's Exhibit No. 82, and she did a
23 blood typing on it to determine the type of the blood.

24 Q All right. Do you remember, perhaps, what type blood,
25 if she was able to type it?

COPY

1 Q With regard then to State's Exhibit No. 71, can you tell
2 us if you see such a marking?

3 A Yes, sir, I do. There is a laboratory file number, a
4 date. It's smudged. It's written on plastic and it's
5 smudged off but I can still recognize -- make that part
6 of the markings.

7 Q Does it correspond then to the number assigned that's on
8 the sexual assault work sheet as best you can tell?

9 A Yes, sir. Also I just now noticed that on the inside
10 pocket there is a laboratory file number, a date, and
11 Roxanna Payne's initials.

12 Q With regard then to State's Exhibit No. 72, can you
13 recognize that as an item that Roxanna had received in
14 some fashion?

15 A Yes, sir, it bears the laboratory file number, the date.
16 The laboratory file number referring to is L3C. L3C
17 means that's the numbers assigned by the Corpus Christi
18 laboratory. The 29929 means that that's the 29,929th
19 case that has come through that laboratory since it was
20 first opened back in the 1950's. The case -- basically
21 when a case comes in, is given a unique number and
22 State's Exhibit 72, State's Exhibit 73, 74, 75, 76 --
23 yeah, I see State's Exhibit 77. I'm looking for the
24 markings. I do see initials there, No. 78, 79, 80, 81,
25 82, and 83.

1 connection with the materials that were received?

2 A The State's Exhibit 88 which is the work sheet does
3 reflect that she did do some examinations.

4 Q Okay. Now, before you, I believe, are several pieces of
5 evidence --

6 MR. DIES: May I approach the witness
7 again, Your Honor?

8 THE COURT: You may.

9 Q (By Mr. Dies) -- marked State's Exhibits 70, I believe
10 through 70 -- excuse me, through 83 and I have them laid
11 out here sequentially according to their particular
12 number. Now, when you arrived this morning you and I
13 talked for the first time, did we not, with regard to
14 these particular pieces of evidence?

15 A Yes, sir, we did.

16 Q And with regard to these particular pieces of evidence,
17 is there some way that you can recognize any or,
18 perhaps, all of these particular exhibits, State's
19 Exhibits, excuse me -- State's Exhibits 71 not 70, 71
20 through 83. Can you recognize them by some signature or
21 appearance or something that tells you that Roxanna
22 worked with these items or assigned it a number or
23 something like that.

24 A Yes, sir, there will be markings on there which will be
25 placed on there by Roxanna when she did the examination.

COPY

1 Q (By Mr. Dies) With regard then, please, Mr. Waller, to
2 State's Exhibit No. 87, does that help you in telling us
3 whether you did, in fact, receive some evidence from the
4 Freeport Police Department in connection with a sexual
5 assault for analysis?

6 A Yes, sir, it does.

7 Q All right. And did you assign a particular number to
8 that?

9 A Yes, sir, I did.

10 Q All right. And do you remember how it was you
11 received -- or does the evidence record sheet you have
12 before you tell us in what fashion or what form you
13 received that particular evidence from Freeport?

14 A I received it in a box received by certified U. S. Mail.

15 Q And did you cause the receipt then to be returned to the
16 Freeport Police Department as evidence for them that you
17 had received it?

18 A No, sir, I did not. The mail is picked up at our post
19 office box and is delivered to the laboratory building
20 or to the headquarter's building and is delivered to the
21 laboratory in a sealed condition.

22 Q Okay. Now, with regard to testing by Roxanna Payne,
23 does your evidence record sheet or the sexual assault
24 work sheet that has been admitted reflect that Roxanna
25 did some testing for the Freeport Police Department in

1 A I don't personally of my own personal memory record --
2 remember receiving this particular item. That's why I
3 make records.

4 Q All right. And that's why you got the record today; is
5 that correct?

6 A Yes, sir, it is.

7 Q Okay.

8 MR. DIES: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 MR. DIES: Your Honor, with regard then
12 to State's Exhibits 87 and 88, I would offer
13 them into evidence and tender them for
14 Counsels' inspection and objection as business
15 records of the Department of Public Safety's
16 chemistry laboratory in Corpus Christi, Your
17 Honor.

18 MR. HOWELL: No objections, Your Honor.

19 MR. SILVAS: We have no objections, Your
20 Honor.

21 THE COURT: All admitted.

22

23 (Whereupon, State's Exhibit Nos. 87 and 88 were offered
24 and received in evidence.)

25

COPY

1 Q And the entries that appear on there -- you recognize
2 first of all the handwriting of the entries?

3 A Yes, sir, I do.

4 Q And you recognize those to be whom?

5 A Roxanna Payne's.

6 Q With regard to the entries that Roxanna placed on that
7 particular exhibit, would those particular entries have
8 been made at or near the time of the particular things
9 that Roxanna may have been doing with regard to an
10 analysis?

11 A Yes, sir.

12 Q And with regard to the entries that appear on that
13 particular piece of evidence, would those entries have
14 been made at or near the time of the specific incident
15 that's occurring and with personal knowledge of Roxanna
16 as to what is being placed on that exhibit?

17 A Yes, sir, it would.

18 Q And also, sir, with regard to that particular exhibit,
19 the sexual assault work sheet that you have before you,
20 that would also be in your care, custody, control, and
21 management as a supervisor, would it not?

22 A Yes, sir.

23 Q You do recall receiving some evidence from the Freeport
24 Police Department in connection with a sexual assault or
25 rape examination or rape kit, do you not?

1 Q All right. And with regard to the evidence disposition
2 that would be recorded on that particular sheet and the
3 entries by Roxanna Payne, those entries would be made by
4 her with personal knowledge as well, would they not?

5 A Yes, sir.

6 Q And with regard to the entries that appear made by you
7 and that you recognize to be made by Roxanna, those
8 entries would have been made at or near the time of the
9 particular event recorded whether it be the receipt of
10 evidence from Freeport Police Department or the return
11 of the evidence to the Freeport Police Department; is
12 that correct?

13 A Yes, sir, that is correct.

14 Q And then with regard to State's Exhibit No. 87, that is
15 in the care, custody, control, and management of you as
16 a supervisor; is that correct?

17 A Yes, sir.

18 Q All right. With regard to State's Exhibit No. -- I
19 believe 88, sir, the sexual assault work sheet?

20 A Yes, sir.

21 Q Is that particular exhibit also a work sheet or a
22 document that's to be prepared and was prepared in the
23 regular course of business of the chemistry laboratory
24 there in Corpus Christi where you and Roxanna work?

25 A Yes, sir.

COPY

1 A Yes, sir, I do recognize it.

2 Q And how can you recognize the handwriting that appears
3 on there?

4 A The top part when the evidence was received is my own
5 handwriting since I personally opened this mail when it
6 came into laboratory. The bottom part is that of
7 handwriting I recognize it as Roxanna Payne.

8 Q And she has worked with you for how long at the time,
9 perhaps, maybe when she placed her initials on this
10 particular disposition sheet or record sheet?

11 A Roxanna started working for me in Corpus Christi I
12 believe it was about the first of May or June of 1984,
13 so this is about six months.

14 Q With regard then to State's Exhibit No. 87, the entries
15 that appear on there then would obviously have been made
16 by a person who had personal knowledge of the entries
17 that they're placing on State's Exhibit No. 87; is that
18 correct?

19 A Yes, sir, that is our policy.

20 Q And with regard to the entry made by you regarding the
21 receipt of the evidence that those particular entries
22 would have been made by you, with knowledge of that
23 particular receipt in the manner in which the evidence
24 was received; is that correct?

25 A That's correct.

1 particular laboratory where Roxanna works, can you tell
2 us if you maintain and do keep some specific kinds of
3 records so that we can determine when and if your lab
4 receives evidence from Freeport -- from police
5 departments for testing?

6 A Yes, sir, we do keep records.

7 Q All right. Now, I have marked for identification
8 purposes two exhibits. Would you take the first one
9 with regard to an evidence record sheet, please, sir,
10 and what is that number?

11 A It's marked State's Exhibit No. 87.

12 Q With regard to State's Exhibit No. 87, can you tell us
13 whether or not that particular exhibit is a document or
14 sheet that's prepared in the regular course of business
15 there with a laboratory in Corpus Christi?

16 A Yes, sir, it is. It's used to document the receipt of
17 evidence in the laboratory. Also when we finally -- the
18 evidence leaves our custody, who we give it to and what
19 we do with it.

20 Q With regard to State's Exhibit, again, it's No. 87, sir?

21 A Yes, sir.

22 Q Can you tell the jury and His Honor whether or not the
23 entries that appear on State's Exhibit No. 87 -- first
24 of all, do you recognize, perhaps, the handwriting that
25 appears as the entries on State's Exhibit No. 87?

COPY

1 sheets with you?

2 A Yes, sir, I did.

3 Q And I believe you also brought, specifically, a letter
4 that was prepared or a report that was prepared in
5 connection with some testing that Roxanna did with your
6 lab for the Freeport Police Department; is that correct?

7 A Yes, sir.

8 Q Okay..

9 MR. DIES: May I approach the witness,
10 Your Honor?

11 THE COURT: You may.

12 Q (By Mr. Dies) Mr. Waller, can I see that evidence
13 record sheet and that assault work sheet, please, sir?

14 A All right. There is the evidence record sheet. Here is
15 their work sheet.

16 MR. DIES: Would you mark these, please,
17 as State's Exhibits and mark these
18 correspondingly?

19

20 (Whereupon, State's Exhibit No. 87, 88, 89, and 90 was
21 marked for identification purposes, at the conclusion
22 of which the following proceedings were had:)

23

24 Q (By Mr. Dies) Mr. Waller, with regard to your
25 responsibilities and duties as the supervisor of that

1 Christi and assigned the duties of supervisor.

2 Q Who's Roxanna Payne, sir?

3 A Roxanna Payne is a young woman who works for me. She is
4 a chemist toxicologist. She does all of the blood
5 typing work.

6 Q And in order to be employed and do that kind of work,
7 what kind of qualifications does Roxanna Payne or any
8 employee have to have?

9 A She has to -- Roxanna does have a college degree. She
10 has a degree in medical technology and a degree major in
11 biology. She has a number of years of hospital blood
12 banking experience. She spent approximately six months
13 in our Austin laboratory working with the senior people
14 in the laboratory before being assigned to Corpus
15 Christi.

16 Q Where is she at this time?

17 A As of yesterday she was sick. I assume she still is.

18 Q She was originally scheduled to testify in this
19 particular matter; is that correct?

20 A Yes, sir. And about lunchtime she got -- she hadn't
21 been feeling good for several days; and she got very,
22 very bad about lunchtime yesterday.

23 Q All right. I asked you to bring some records in
24 connection with the testing and evidence that she had
25 received. Did you bring such evidence or such work