

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
JUN 26 1987
MARY JANE SMART
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APPELLATE COURT NO. 14-87-345-CR
IN THE COURT OF APPEALS
OF THE STATE OF TEXAS

ANTHONY TODD ROBINSON,

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

338th
APPEAL FROM ~~338th~~ DISTRICT COURT
HARRIS COUNTY, TEXAS
Judge Mary Bacon, Presiding

STATEMENT OF FACTS

TRIAL

VOLUME III OF *5* VOLUMES

Edna Hipp
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

1 if anything would be similar or dissimilar. Is
2 that correct?

3 A. They could detect similarities.

4 MR. PINK: I pass the witness.

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

7 THE COURT: May Mr. McGeehon be excused?

8 MR. DAVIS: Yes, ma'am.

9 MR. PINK: Yes, ma'am.

10 THE COURT: Thank you very much, Mr.
11 McGeehon, for being with us this afternoon.

12 Call your next witness.

13 MR. DAVIS: Randy Snyder.

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RANDY SNYDER

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

DIRECT EXAMINATION

BY MR. DAVIS:

Q. Would you state your name, please?

A. Randy Snyder.

Q. Where is it that you work?

A. The Texas Department of Public Safety crime laboratory in Houston.

Q. What kind of work do you do there?

A. I'm a laboratory supervisor.

Q. And can you tell us what exactly that is?

A. Well, I make sure that the different areas of the laboratory are running properly and take care of two secretaries and four other chemists that also work there.

Q. Are you yourself a chemist, sir?

A. Yes, that's correct.

Q. Can you tell us what your background is in that field?

A. I have a degree in chemistry from Texas Tech University, and I have undergone approximately nine months of training through the Austin laboratory in the different areas that we

1 work in.

2 Q. How long have you been a chemist with the
3 DPS?

4 A. For three and a half years.

5 Q. What exactly is the type of work that you
6 perform there as a chemist, you and the other
7 chemists?

8 A. There are three or four different areas
9 that we work in. The largest area is drug
10 analysis. The other areas are serology, which
11 includes blood typing and different stain typing
12 and blood-alcohol determinations and also trace
13 evidence determinations, which might include hair,
14 fiber, glass or paint.

15 Q. Let me ask you, do you have occasion to
16 perform tests specifically in say a rape type of
17 case or perhaps a murder case, whatever it might
18 be, for determination of body fluids, either blood
19 or spermatozoa or whatever?

20 A. Yes, we do.

21 Q. Are you the custodian of records there at
22 the Department of Public Safety lab?

23 A. Yes, that's correct.

24 Q. And are the records that are kept at the
25 lab, are those kept in the normal course of the

1 business of the DPS lab?

2 A. Yes, they are.

3 Q. And are the entries made in those records,
4 are those made by persons who have personal
5 knowledge of what is contained in them?

6 A. Yes, that's correct.

7 Q. And would that person make those entries
8 in those records at or near the time of the events
9 that they are recorded?

10 A. Yes, they do.

11 Q. Did you bring with you Texas Department
12 of Public Safety records in regard to a defendant
13 by the name of Anthony Todd Robinson?

14 A. Yes, I did.

15 Q. And was that report given a particular
16 laboratory number?

17 A. Yes, it was.

18 Q. What exactly is that number?

19 A. The number is L-2H-53073.

20 Q. Can you tell us, Mr. Synder, what items
21 that are listed in your report were submitted?

22 A. Would you like me to read all the items
23 submitted?

24 Q. Yes, if you would, I would appreciate it.

25 A. Item number one is the sexual assault kit.

1 I'm reading from the laboratory report. Item
2 number two is panties; three, suspect samples,
3 blood, semen, saliva, pubic hair. Four, Army
4 fatigue jacket. Five, blue jeans. Six, dark blue
5 plaid shirt. Seven, white mens underwear. Eight,
6 off-white shirt. Nine, socks, a black belt. Ten,
7 sneaker. 11, dark pink towel. 12, light pink
8 towel. 13, brown pants. 14, sweater. 15, tote
9 bag. 16, auto shack vest. 17, navy tie. 18,
10 black gloves, 19, brown shoes. 20, brown leather
11 belt. 21, gun holster. 22, toilet paper from
12 scene.

13 Q. And, Mr. Synder, you didn't personally
14 perform the tests on these items, did you?

15 A. No, I did not.

16 Q. Who was it who performed those tests?

17 A. Irma Rios.

18 Q. And is she with your office any more?

19 A. She doesn't work in the laboratory any
20 longer.

21 Q. Where is she now?

22 A. In the Austin laboratory.

23 Q. Is she in Austin right now?

24 A. No. Presently she's in Washington D.C.

25 Q. Can you tell the jury a little bit about

1 her background in the field of chemistry, if you
2 know?

3 A. She has a chemistry degree from A & M
4 University, and she has also undergone a training
5 program through the Austin laboratory.

6 Q. Have you had an opportunity to review
7 that report that she made?

8 A. Yes, I have.

9 Q. And as her supervisor are you familiar
10 with the types of tests that Ms. Rios performed in
11 evaluating the evidence in this case?

12 A. Yes, I am.

13 Q. Can you tell us, Mr. Snyder, what kind of
14 tests did Ms. Rios perform and what exactly it was
15 that she was looking for?

16 A. Well, she performed several different
17 tests. What she was looking for was the presence
18 of semen and foreign hair, if any, were present.
19 And also in the process she typed known blood
20 samples.

21 MR. DAVIS: May I approach the witness,
22 Your Honor?

23 THE COURT: Yes.

24 BY MR. DAVIS:

25 Q. Mr. Snyder, I'll show you what has been

1 marked as State's Exhibit No. 27. It is a packet.
2 I'll ask you if that has the same laboratory
3 number contained on your report?

4 A. Yes, it does.

5 Q. Do you know what the contents of that
6 package are or what they contain?

7 A. I wouldn't know without looking inside.

8 Q. Go ahead. What exactly were those items
9 you were handling?

10 A. The suspect samples that I had listed
11 earlier.

12 Q. That's semen, saliva, blood and pubic
13 hair?

14 A. Yes, that's correct.

15 MR. DAVIS: May I approach the witness
16 again, Your Honor?

17 THE COURT: Yes.

18 BY MR. DAVIS:

19 Q. I'll show you State's Exhibit No. 13 and
20 I'll ask you to take a look in it and tell me if
21 you can tell us what is contained within that
22 package? Also I think contained inside is State's
23 Exhibit No. 12, which is a piece of paper. Also
24 State's Exhibit No. 12. But if you would, can you
25 tell us what that is?

1 A. The items from the sexual assault kit.

2 Q. Okay. Can you tell the jury what a
3 sexual assault kit is?

4 A. Well, it's items taken from a victim
5 which generally include blood samples, pubic hair,
6 vaginal swabs, vaginal smears and anything else
7 that the examining physician might deem as
8 necessary.

9 Q. What is the purpose of gathering that
10 type of evidence, if you know?

11 A. Well, there are several purposes. The
12 blood type is used to determine the victim's blood
13 type, vaginal swabs and smears are used to check
14 for the presence of semen, and the hair samples,
15 well, there are actually two hair samples. One is
16 generally a pubic hair from the suspect and a
17 pubic hair from the victim.

18 Q. Is that rape kit that you described, does
19 that have the particular lab number pertaining to
20 the victim, [REDACTED] [REDACTED]?

21 A. Yes, that's correct.

22 Q. I'll ask you to take a look at State's
23 Exhibit No. 12. And can you tell us exactly what
24 that is, if it's reflected in your report and if
25 you know? You can go ahead and open it?

1 Do you know what is contained within that
2 exhibit, sir, or is it reflected in your report?

3 A. Yes. It contains one pair of panties.

4 Q. Mr. Snyder, can you tell us what tests
5 were run on all these various items that were
6 submitted and what results were obtained, if there
7 were any?

8 A. Okay. The victim's blood sample was
9 typed, and it came up to be type A, secretor. The
10 suspect blood sample was also typed. And it is
11 also A, secretor.

12 Q. I'm not real familiar with the term type
13 A, secretor. Can you tell us what, first of all,
14 what type A is and what secretor means?

15 A. Well, the type A refers to basic blood
16 group ABO in which there are four types. A, B, O
17 and AB, which is a general blood type that we also
18 test for.

19 Q. Okay.

20 A. The secretor part of it stands for, or
21 represents an antigen that we type for. A person
22 either is a secretor or a non-secretor. And if
23 they are a secretor this means that most generally
24 the person will secrete their blood type,
25 referring to ABO blood type, in their body fluids,

1 typically saliva, sweat or semen.

2 Q. Meaning that you could take saliva
3 samples or semen samples or something like that
4 and determine the blood type from those secretions?

5 A. Yes, if they are a secretor.

6 Q. If they were not a secretor, what happens
7 then?

8 A. Generally you will not find that blood
9 type in those body fluids.

10 Q. So you have to get it just from the blood
11 in persons that are non-secretors?

12 A. Yes, that's correct.

13 Q. Ms. [REDACTED] and this defendant had both
14 the same type and they were both secretors?

15 A. Yes, that's correct.

16 Q. What other results were found?

17 A. She also checked the vaginal swab for the
18 presence of seminal fluid.

19 Q. What is seminal fluid?

20 A. Seminal fluid is white viscous fluid that
21 is ejaculated from the testicles.

22 Q. So it's strictly from a male?

23 A. Yes, that's correct.

24 Q. And in checking the vaginal -- was it
25 swab?

1 A. Yes, it was swab.

2 Q. In checking the vaginal swab, were there
3 any results determined from that test? Let me ask
4 you this -- was there any spermatozoa found or
5 semen found?

6 A. Yes, semen was found on the swab.

7 Q. That would mean -- was that in the rape
8 kit from Ms. [REDACTED], the vaginal swab taken from
9 Ms. [REDACTED]?

10 A. Yes, I believe so.

11 Q. So, in other words, there was semen or
12 sperm found in the vagina of Ms. [REDACTED] if the
13 swab was taken from her vaginal area? Would that
14 be a fair statement?

15 A. Yes, it would.

16 Q. What else was found, if anything?

17 A. The vaginal swab was also checked for a
18 blood type in the semen. Type A blood group
19 substance was present, which would suggest that a
20 person of type A blood who is a secretor was the
21 donor, if you will, of the semen.

22 Q. Was there any other, anything else of
23 significance that was found?

24 A. Well, the semen in the vaginal swab was
25 further typed to determine any enzymes that might

1 be present. And the results were that PGM 2-1
2 enzyme and PEP A enzyme 1 were present.

3 Q. What all does that mean?

4 A. The PGM and the PEP A are enzymes present
5 in the body fluid and also in the blood. If you
6 check the semen for blood type and find a blood
7 type, then you can further type that semen to
8 determine a sub type, which in this case was done.

9 Q. Okay. What findings did you have there?

10 A. Well, the sub type found in the semen was
11 the same as the sub type found in the blood of the
12 victim and the suspect.

13 Q. So if you can, put it in laymen's term,
14 what all does that mean?

15 A. Well, that means that seminal fluid was
16 found on the vaginal swab. The seminal fluid
17 contained group A or type A group substance, same
18 as the victim and the suspect. Further typing
19 showed that it contained enzymes which were also
20 similar to the enzymes present in the blood of the
21 suspect and victim.

22 Q. So the tests, I take it, are -- correct
23 me if I'm wrong -- are basically inconclusive.
24 You can't say -- the test can never point to one
25 particular person as having been a donor; it's

1 just a type. Is that right?

2 A. Yes. That's correct.

3 Q. Okay. What the test basically does I
4 guess would be to exclude someone, someone who
5 could not have donated that type of blood type?

6 A. That's correct.

7 Q. Okay. So although you cannot say that
8 any one particular person of that blood type was
9 the donor, you can say that that person was
10 possibly the one because of that type?

11 MR. PINK: Object to that. That's an
12 improper statement.

13 MR. DAVIS: I don't know if it is or not.
14 I was asking the chemist.

15 THE COURT: I'll let him answer the
16 question. Overruled.

17 MR. PINK: He was leading.

18 THE COURT: If you can answer. Can you
19 answer the question?

20 A. I'll rephrase. The results here show
21 that the semen found had the similar blood type to
22 either the victim or the suspect and does not
23 exclude them.

24 Q. So you can't say it's him for sure. Is
25 that correct?

1 A. Yes, that's correct.

2 Q. And specifically in that test you could
3 never say that for sure at all, could you?

4 A. Well, I wouldn't say it's not at all
5 possible. If the person had a rare blood type,
6 then you could. But that's very rare.

7 Q. For type A, that is not a rare blood type?

8 A. No, it's not.

9 Q. But what you are saying is that this
10 defendant does have that type A blood type and
11 cannot be excluded as a possible donor of that
12 semen?

13 A. Yes, that's correct.

14 Q. Was there anything else of significance
15 that was done?

16 A. There was a seminal stain in the panties
17 which was also tested and found to contain semen
18 of the same blood type again as the victim and
19 suspect.

20 Q. Basically the same result as with the
21 vaginal swab?

22 A. Yes, exactly the same results.

23 Q. Anything else?

24 A. Well, the hairs were, from the pubic hair
25 were found to be similar to the victim's non-pubic

1 hairs.

2 Q. So nothing unusual about that?

3 A. No.

4 Q. Anything else?

5 A. No, I believe that's all.

6 MR. DAVIS: I'll pass the witness, Your
7 Honor.

8 Your Honor, if I may, before I do that.
9 May I approach the witness?

10 THE COURT: Yes, you may.

11 (State's Exhibit 29 marked for
12 identification)

13 BY MR. DAVIS:

14 Q. Mr. Snyder, do you have the original
15 report there with you here today?

16 A. Yes, I do.

17 Q. And I'll ask you to look at State's
18 Exhibit No. 29. I'll ask you if that's an exact
19 copy of that original, if you would take a look at
20 it?

21 A. Yes, it is.

22 MR. DAVIS: Your Honor, at this time I
23 would offer into evidence State's Exhibit No. 29
24 after tendering to Mr. Pink for his inspection.

25 MR. PINK: I have no objection.

1 THE COURT: There being no objection,
2 State's 29 will be admitted.

3 MR. DAVIS: Your Honor, I would also
4 offer State's Exhibits 12, 13. These are the
5 contents of this, State's Exhibit 27. And I would
6 also offer these, contents, after tendering to Mr.
7 Pink.

8 MR. PINK: I have no objection to the
9 contents, just the hearsay on the --

10 THE COURT: Okay. Do you want them
11 rebagged, then?

12 MR. PINK: If it's hearsay, Your Honor,
13 but I have no objection to the contents. Prior to
14 any submission to the jury, I request bag them in
15 court envelopes that do not have the hearsay.

16 THE COURT: 12, 13, 27 are admitted
17 subject to qualification.

18 MR. DAVIS: I pass the witness.

19 THE COURT: We're going to take another
20 five minute break here and then start.

21 (Brief recess)

22
23 CROSS EXAMINATION

24 BY MR. PINK:

25 Q. Your name, please, again, sir?

1 A. Randy Snyder.

2 Q. My name is Walter Pink. I need to ask
3 you a few questions, please, sir.

4 A. Certainly.

5 Q. I'm like Mr. Davis here. We're kind of
6 laymen at some of the scientific terminology. So
7 we're going to try to break it down so we can
8 communicate and understand. First, am I correct
9 in paraphrasing, in saying that your examination
10 insofar as the blood type is concerned is that the
11 defendant Mr. Robinson could be the guilty party,
12 in essence; that's one proper way to phrase it?

13 A. Yes, that could be said.

14 Q. All right. And in that line you were
15 telling about the type A. You say that is a very
16 common type of blood type, right?

17 A. Yes, it is.

18 Q. Could you give me answers about how many
19 people in Houston or in Texas would have that type
20 of blood, just roughly?

21 A. Well, the figures we generally use are
22 from the FBI, and they are nationally, but for
23 type A, it's about 40 percent.

24 Q. Of the population?

25 A. Yes, that's correct.

1 Q. So if we had a hundred thousand people,
2 we're talking 40,000 people roughly, at that
3 percentage?

4 A. That's correct.

5 Q. Now, let me ask you this. In terms of
6 further breakdown and identification, is it a fact
7 that this RH factor would further break down and
8 help identify persons; is that not correct?

9 A. Yes, that can be done.

10 Q. Do you know whether or not Ms. [REDACTED] is
11 positive or negative?

12 A. No, we don't do that testing.

13 Q. Could it have been done?

14 A. Yes, it could have.

15 Q. Wouldn't that have helped further given
16 us an answer to our dilemma in terms of being
17 negative or positive?

18 A. It could have helped, yes.

19 Q. So that that is one step that was not
20 done that perhaps could have helped had it been
21 done?

22 A. That's possible, yes.

23 Q. Are you aware that based on your
24 examination that Mr. Robinson is A positive?

25 A. No, I'm not.

1 Q. If Mr. Robinson was A positive and Ms.
2 Chapman was A negative, that would give us some
3 sort of area with which to try to work in terms of
4 RH factor; would it not? Some, not all, but some?

5 A. Well, the RH factor pertains to whole
6 blood. I don't know if it pertains to semen or
7 not.

8 Q. But since they are secretors, right, you
9 can get their blood type from any of these items
10 that we listed, right?

11 A. That's correct.

12 Q. Now, you are aware that in a criminal
13 case a defendant doesn't have to prove anything.
14 He doesn't have to prove anything. You're aware
15 of that?

16 A. Yes, I am.

17 Q. Now, and, thus, we're just saying that
18 under A, he could be a possible suspect. Now, let
19 me ask you this. As to the sampling, I read
20 something in your report and I want you to correct
21 me for when I talk to the jury later, is it not
22 true that you all took samples, hair samples from
23 the victim's panties and from her vaginal area?

24 A. I believe, yes, that's true.

25 Q. All right. And is it not true that the

1 samples that you took from her and from her
2 panties were similar and that there was nothing
3 foreign in her vaginal hair or her panties.
4 Correct?

5 MR. DAVIS: If I may, just for purposes
6 of clarification, I don't know if he's talking
7 about sperm or hair. I just ask for a
8 clarification as to that.

9 MR. PINK: I have no problems with what
10 I'm asking.

11 MR. DAVIS: Judge, I do.

12 THE COURT: Would you clarify, please?

13 MR. PINK: Yes, ma'am.

14 Q. May I read this to you. The hair present
15 in the complaining victim's panties are
16 microscopically similar to the victim's known hair
17 samples. What does that mean, please, sir?

18 A. That the hair present from the combing
19 and on the panties had similar characteristics to
20 the victim's.

21 Q. As to her panties, right, and her hair,
22 right?

23 A. Yes, that's true.

24 Q. And there were no foreign hairs recovered.
25 What does that mean?

1 A. Exactly what it says. No foreign hairs
2 were found.

3 Q. All right. And then there were some
4 items turned over to you-all that belonged to this
5 man, clothing, coats, shoes, belt, just all, every
6 item where any kind of hair or particle could have
7 been on there under your 22 items that you listed.
8 Is that correct?

9 A. Yes, it is.

10 Q. And a thorough examination of every item,
11 iota of every piece of article that this gentleman
12 had -- what does this mean, the hairs recovered
13 from the suspect clothing were microscopically
14 dissimilar to any of the victim's hair samples?

15 A. I'm sorry? There were no hairs similar
16 with the victim on the suspect clothing.

17 Q. That's what that means, right?

18 A. That's correct.

19 MR. PINK: I pass the witness.

20 MR. DAVIS: No further questions, Your
21 Honor.

22 THE COURT: Thank you, Mr. Synder.

23 May Mr. Synder be excused, gentlemen
24 all purposes?

25 MR. DAVIS: Yes, ma'am.

1 MR. PINK: Yes, ma'am.

2 THE COURT: Thank you very much for being
3 with us this afternoon, Mr. Snyder.

4 MR. DAVIS: State rests, Your Honor.

5 THE COURT: Members of the jury, the
6 State has rested. That means the State has
7 presented its case in chief to you. At this time,
8 there will be certain legal matters that we'll
9 need to take up, and there is no point keeping you
10 down here while we do that because it may take a
11 little while. As I'm sure you know, one of your
12 members has sustained a loss in his family and
13 consequently I could not possibly ask him to serve
14 tomorrow afternoon, but I will ask you if you
15 would to meet in the morning, not at a quarter to
16 ten but a quarter to nine so we can work through
17 the full morning. We'll work until noon. And
18 that should give you time, sir, for your family
19 tragedy. Overnight, of course, the same
20 admonitions still hold. I know you are tired of
21 hearing me give them to you, but the law requires
22 me to keep on reminding you not to talk about the
23 case and not form any opinions. So, you are
24 excused for the night. Please meet in the morning
25 at a quarter of nine. Thank you so much.

1 (The jury is removed from the courtroom)

2 MR. PINK: Outside the presence of the
3 injury. Now comes the defendant, Anthony Robinson,
4 by and through his attorneys of record, Walter
5 Pink and Robert Wallace, and respectfully moves
6 this honorable court for an instructed verdict.
7 The State has rested as far as the major portion
8 of its evidence is concerned, and we feel that as
9 a matter of law, based on the proof and scientific
10 proof that has been introduced by the State, that
11 the evidence is insufficient particularly as to
12 this person being the person who assaulted the
13 lady in question. As such, Your Honor, based on
14 evidence that we have presented through cross
15 examination and based on evidence that has been
16 presented by way of direct examination from the
17 State, we respectfully move this Honorable court
18 for a directed instructed verdict.

19 THE COURT: Motion denied.

20 MR. PINK: Now, I need the Officer
21 Barrera, Officer Williams, and the complainant.

22 THE COURT: That's all?

23 MR. PINK: That's all.

24 MR. DAVIS: We'll do.

25 (End of the day)