

1 going to smear the fingerprint to the point it is no longer
2 verifiable.

3 MR. MOSS: No further questions.

4 MR. CURRAN: I have nothing further.

5 MR. MOSS: May the witness be excused?

6 THE COURT: The witness is excused.

7 (The witness was excused.)

8 JOSEPH CROW being sworn by the Deputy Clerk, testified:

9 DIRECT EXAMINATION

10 QUESTIONS BY MR. MOSS:

11 Q Would you state your name again for the record,
12 please?

13 A Joseph Crow.

14 Q And are you employed with the St. Louis Metropolitan
15 Police Department?

16 A Yes, I am.

17 Q In what capacity?

18 A Crime analysis.

19 Q What are your activities and duties?

20 A To receive evidence submitted by police officers,
21 perform appropriate tests on the evidence received, write a
22 report concerning the evidence received and the result of the
23 tests performed and to testify in court concerning the evi-
24 dence we received, the tests performed and the results.

25 Q What specific -- Now, I'm interested in the area of

1 body fluids. Do you specific examinations, for type or body
2 fluid?

3 A Yes, I do.

4 Q Specifically, in regard to rape evidence, what types
5 of tests do you do?

6 A I have a degree in chemistry from the University of
7 Missouri. I went through a six month training period in the
8 United States Army which included the examination of body
9 fluids, both human blood and human seminal fluids, I took
10 two courses at the FBI Academy that included the examination
11 of blood and body fluids and have taken graduated courses at
12 Northeast State University and Southeast Missouri State Uni-
13 versity on the identification of body fluids. In rape cases,
14 what we're looking for is seminal fluid on items of evidence
15 and to try to connect the person who had intercourse or try
16 to prove who the person was that had intercourse with the vic-
17 tim.

18 Q All right. Now, in conjunction with your duties,
19 specifically on or about the 31st or 1st day of February,
20 1984, did you receive your laboratory what is known as a
21 sexual assault kit containing various smears of body areas
22 and other items including panties of the victim?

23 A Yes, I did.

24 Q Likewise, did you receive from Detective Patrolman
25 Sengheiser a portion of fabric?

1 A Yes, I did.

2 Q And likewise, did you receive a one package con-
3 taining a sweatshirt?

4 A Yes, I did.

5 Q All right. Let me show you an item which I removed
6 from an envelope marked State's Exhibit Twenty and tell me if
7 you can -- I better mark this as Twenty-three.

8 (Whereupon, said envelope was marked as State's Exhibit
9 Twenty-three, for identification.)

10 Q (by Mr. Moss) Let me show you what's been marked
11 as State's Exhibit Twenty-three, what is it I have handed to
12 you?

13 A A slide mailer marked vaginal smears.

14 Q Did you receive it in a specific rape kit that has
15 been designated as State's Exhibit Twenty?

16 A Yes, I did.

17 Q All right. Did you examine it and if so, what test
18 did you perform on it and what did those tests disclose?

19 A I performed a microscopic examination. That is, I
20 took one slide and put it on a microscope and looked at it
21 through the microscope. I found human spermatazoa on the
22 slide.

23 Q All right. And human spermatazoa is the body fluid
24 that comes from where?

25 A From the male penis during ejaculation.

1 Q Likewise, did you examine some State's Exhibit
2 Nineteen?

3 A Yes, I did.

4 Q And what did you examination disclose concerning
5 the examination of those panties?

6 A There was a stain in the crotch of the panties.
7 Analysis of the stain revealed the presence of human sperma-
8 tozoa.

9 Q Likewise, did you examine State's Exhibit Twenty-
10 two?

11 A Yes, I did.

12 Q And what did you examination of State's Exhibit
13 Twenty-two disclose?

14 A There was a stain on the sweater. I can't recall
15 exactly where without taking it out. Examination of the
16 stain revealed the presence of human spermatozoa.

17 Q Okay. And did you receive it in this particular
18 container bearing the name of Jane DeRousse?

19 A Yes, I did.

20 Q The slide that was in there, did you make it?

21 A Yes, I did.

22 Q Or the package of slides?

23 A Yes.

24 MR. MOSS: You may inquire.

25 CROSS EXAMINATION

1 QUESTIONS BY MR. CURRAN:

2 Q Dr. Crow, is there a way to type the spermatozoa?

3 MR. MOSS: Excuse me. I object to the irrele-
4 vancy unless it was done in that particular case.

5 MR. CURRAN: That's what I was reading up,
6 Judge.

7 THE COURT: Overruled.

8 MR. MOSS: Excuse me. Can we approach the
9 bench?

10 THE COURT: You may.

11 (Counsel approached the bench and the following proceed-
12 ings were had:)

13 MR. MOSS: I would just point out that this
14 is somewhat like when fingerprints are not searched for.
15 The action has not been discussed. It's not relevant under
16 State versus Nolan either in the final argument or in the
17 case. To my knowledge, this Court has, in the past, excluded
18 testimony concerning the type of tests which Mr. Curran is
19 talking about. Namely, a saliva test. This Court, in the
20 past, has found the percentages are insufficient to allow
21 relevancy or admissability to that particular test result. I
22 don't see the materiality whether the tests weren't performed
23 and when the Court won't let the tests results in and if he's
24 allowed to pursue this area, I -- If it discloses that he is
25 one in the group of people that could have had intercourse

1 with her, I would seek to have that admitted, but I would
2 run into a problem of what this Court's prior cases have been
3 on this type of thing, so I think we're barking up a tree
4 and that can't be. We're going to get into evidence that
5 leads to nowhere.

6 MR. CURRAN: Judge, my basic position is that
7 I don't see what the harm is in the State asking the question
8 as far as what tests are run. I realize with fingerprints --
9 First of all, I believe he can ask if they were checked or
10 not and this is a question that can be asked and determines
11 what can be argued. What I have now -- The State put on this
12 man to say, yes, I found sperm at this point. The jury is
13 left with the impression that my client being a male, he ob-
14 viously secretes sperm. I think they have a right to know
15 that there is more tests that weren't done so they're not
16 left with the impression that this is the definite sperm of
17 this man. If we let them go -- If it weren't done, he can
18 explain it. That's fine. I'll abide by that that I'm not
19 allowed to argue that as evidence.

20 THE COURT: I think what the State's attorney
21 has said in respect to the Court's position about the saliva
22 test is correct. I have up to this point, at least not per-
23 mitted evidence of saliva tests which would indicate that a
24 person charged is within that group of persons that could
25 conceivably have done it. And I think for me not to start

1 permitting evidence, but they did make such a test, would
2 run someone to encounter the position I previously have
3 taken. I understand defense's position from the beginning
4 in this case that there was a rape. All this man has testi-
5 fied to so far is evidence that there was a rape. That's
6 not contested as I understand it. The question here in front
7 of us is whether this man did it and it's an identity ques-
8 tion. I don't think that it points in the direction of this
9 man did it at all. The jury knows, ^(HE ASSUMES FOR THE JURY) I think, it's going to
10 be uncontested that there was a rape. The evidence that
11 they're going to have to decide is if there is sufficient
12 identification here to connect this man to it. It doesn't
13 seem to me and if I were sitting as a trier, the mere fact
14 that there was a rape done on this woman wouldn't point to
15 this man at all if it's an identity question. I think that
16 is what the State is saying. I'm going to sustain the objec-
17 tion to it.

18 Q (by Mr. Curran) You didn't take the samples, your-
19 self. Someone else took them and conveyed them to the labora-
20 tory?

21 A Yes.

22 Q You examined the cloth also that was cut out of the
23 seat or not?

24 A Yes, I did.

25 Q And there are tests that you ran on them to deter-

1 mine whether or not the spermatozoa was there; is that right?

2 A Yes.

3 Q And what dates did you conduct these tests?

4 A May I look at my notes?

5 Q Sure.

6 A February the 3rd, 1984.

7 MR. CURRAN: I have nothing further.

8 MR. MOSS: No further questions. May the wit-
9 ness be excused?

10 THE COURT: You may step down and be excused.

11 MR. MOSS: I'd ask for the admission of State's
12 Exhibits One through Twenty-three and request permission to
13 pass State's Exhibits One through Eighteen to the jury.

14 MR. CURRAN: Judge, I'd like to look at them
15 again. I think I'll have an objection to maybe one of them.
16 The rest will be all right. May we approach the bench?

17 THE COURT: You may.

18 (Counsel approached the bench and the following proceed-
19 ings were had:)

20 MR. CURRAN: Judge, I'll object to the admis-
21 sion and the passing to the jury of State's Exhibit Sixteen,
22 which is commonly referred to as a mug shot of Mr. Johnson
23 on the front side of the picture. Underneath it there is a
24 mark that has a number on it. It also has a date of 11-19-83
25 which notes he was arrested on something else. That is evi-