

DONALD WAYNE GOOD

CAUSE NO. F83-81435-J

THE STATE OF TEXAS

VS.

DONALD WAYNE GOOD

I
I
I
I
I

IN THE CRIMINAL DISTRICT
COURT NO. 3 OF
DALLAS COUNTY, TEXAS

JULY TERM, A.D., 1987

HEARING ON PRETRIAL MOTIONS

APPEARANCES:

HONORABLE JOHN VANCE

Criminal District Attorney

Dallas County, Texas

By: MS. LEE ANN BREADING, Asst. District Attorney

FOR THE STATE OF TEXAS

MR. JOHN READ

Attorney at Law

Dallas, Texas

FOR THE DEFENDANT

BE IT REMEMBERED that on the 10th day of August, A.D., 1987, came on to be heard before the HONORABLE GARY STEPHENS, Judge of the Criminal District No. 3 of Dallas County, Texas, without a jury, the above entitled and numbered cause, at which time the following proceedings were had:

1 were had:)

2 THE COURT: You may be seated.

3 Mr. Scott, you may continue.

4 Whereupon,

5 IRVING C. STONE,

6 called as a witness in behalf of the State, having been
7 first duly sworn by the Court, was examined and testified
8 on his oath, as follows:

9 DIRECT EXAMINATION

10 BY MR. SCOTT:

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

13 A. Irving C. Stone.

14 Q. That's S-t-o-n-e?

15 A. Yes, sir.

16 Q. And would you give the jury a brief overview of
17 your background that brings you to your present position.

18 A. I have a Bachelor of Science in geology from
19 the Iowa State University and a Master of Science and a
20 Ph.D. in geochemistry from the George Washington
21 University.

22 I was a special agent in the FBI for six and a
23 half years, which the last two years I spent in the FBI
24 laboratory.

25 I was an analytical chemist in industry for

1 seven years. I've been at the Institute of Forensic
2 Sciences where I am now the chief of the Physical
3 Evidence Section, since 1972.

4 I'm an associate professor of pathology in the
5 University of Texas system, and chairman of the graduate
6 program in forensic sciences for the University of Texas
7 system.

8 Q. Sir, in your capacity as the chief of the
9 Physical Evidence Section of the Criminal Investigation
10 Laboratory of the Forensic Sciences Institute here in
11 Dallas, are you the custodian of all the reports and
12 records generated by employees assigned to your section?

13 A. Yes, sir.

14 Q. Do you therefore have care, custody, control,
15 and management of such records?

16 A. I do.

17 Q. And was Benita Harwood such an employee under
18 your supervision back on the 9th of June, 1933?

19 A. Yes, sir.

20 Q. And thereafter?

21 A. Yes, sir.

22 Q. When did Mrs. Harwood leave the employment of
23 the Forensic Sciences Institute?

24 A. It was approximately February 1936.

25 Q. And did she leave under favorable conditions?

1 A. Yes, sir. .

2 Q. All right. Did she obtain employment in
3 another location?

4 A. Yes. She's at the Arizona State Crime
5 Laboratory in Flagstaff, Arizona.

6 Q. Now, with regard to this particular case that
7 you're down here to testify from the records on, I'd ask
8 you if this would be you all's forensic lab number,
9 33P1167?

10 A. It is.

11 Q. And do you have a -- the complainant listed
12 there as Jane Elizabeth Sherman?

13 A. I do.

14 Q. All right. And the suspect Donald Wayne Good?

15 A. Yes, sir.

16 Q. Now, is it the practice of your laboratory
17 to -- for the employees to make records and reports of
18 their findings?

19 A. Yes, sir.

20 Q. Is it also your practice to keep those records
21 in the course of conducting your business at the
22 laboratory?

23 A. Yes.

24 Q. And next, as was your practice, did Benita
25 Harwood make reports in this case?

1 A. Yes, sir.

2 Q. And did she make those reports at or near the
3 time she reached her findings in this case?

4 A. She did.

5 Q. In these reports did she record her findings
6 based on her own actual knowledge?

7 A. Yes.

8 Q. Now, Dr. Stone, from her records I'll ask you
9 to -- rather, before you go into her records, would you
10 give us just an overview of Mrs. Harwood's
11 qualifications, first with regard to her undergraduate
12 studies. Are you familiar with her obtaining a
13 Bachelor's degree from the University of Texas at the
14 Health Science Center?

15 A. Yes, sir. She has a Bachelor of Science in
16 medical technology from the University of Texas Health
17 Science Center here in Dallas. She spent two years at
18 the Veterans Administration working at the blood bank and
19 came to work in approximately February of 1976 -- excuse
20 me, 1973, at the Institute of Forensic Sciences.

21 Q. And had she attended FBI courses on biochemical
22 analysis of blood and other bodily fluids?

23 A. Yes, sir.

24 Q. Had she attended courses at the Serological
25 Research Institute?

1 A. Yes; in California, that is correct.

2 O. In fact, I believe she even went to Scotland
3 Yard in London and visited the laboratories there?

4 A. Yes, sir, she did.

5 O. What is the study of serology? Could you
6 explain that briefly for the jury.

7 A. Serology is the study of blood and other body
8 fluids in order to identify what we refer to as genetic
9 markers.

10 For instance, a genetic marker would be whether
11 you're blood type A, B, O, or AB. And certainly there
12 are many other genetic marker systems in blood and other
13 body fluids. But serology is the study of that.

14 O. In rape cases do you all study bodily fluids
15 for analytical purposes?

16 A. Yes.

17 O. And would that be, what types of fluids would
18 be relevant in that type of case?

19 A. Well, it depends on the particular incident,
20 but it might involve blood, bloodstains, it might involve
21 the presence of seminal fluid from the male -- either
22 inside the female or on objects or garments at the
23 scene -- and it could involve saliva also which would
24 carry the blood type of a person who would be known as a
25 secretor.

1 Q. And also vaginal type exhibits that you
2 might --

3 A. Yes, vaginal secretions also can carry the
4 blood type of the person who is a secretor.

5 Q. Now, was Mrs. Harwood a serologist?

6 A. She was a forensic serologist, yes, sir.

7 Q. In fact, was she registered with the American
8 Society of Clinical Pathologists, as a medical
9 technologist and serologist?

10 A. Yes.

11 Q. Now, I want to direct your attention back to
12 the reports that she generated on this case back in July,
13 June and July of 1933, and ask you if at that time
14 Mrs. Harwood had already been with the laboratory over
15 five years at that point.

16 A. That is correct.

17 Q. Now, do Mrs. Harwood's records reflect that the
18 evidence obtained at the time of the rape exam by
19 Dr. Lowe, the gynecologist, were they retrieved by your
20 people at the laboratory and brought to you all on
21 Friday, the 10th of June, 1933?

22 A. Yes, sir.

23 Q. And that would be, according to the records,
24 the day after they were obtained by Dr. Lowe?

25 A. That is the record that I have, yes, sir.

1 Q. And is that -- are those exhibits, the swabs
2 and smears and what-have-you, collectively referred to by
3 some name that you all use? All those exhibits that are
4 put in a lock box and retrieved, is that package of
5 exhibits, are they referred to as --

6 A. It's called a sexual assault kit.

7 Q. All right.

8 A. That is obtained by the examining physician.

9 Q. And this sexual assault kit, did it used to be
10 called a rape kit or something like that?

11 A. Well, some people do. I prefer to call it a
12 sexual assault kit.

13 Q. Sexual assault kit.

14 A. Yes, sir.

15 Q. Was there -- do your records reflect also that
16 a blue jumpsuit was submitted at that time?

17 A. Yes.

18 Q. And then do your records further reflect on the
19 14th of June 1983 an Irving officer by the name of Estes
20 brought a blanket to the laboratory?

21 A. That is correct.

22 Q. Now, Dr. Stone, for the record, the record
23 already reflects that State's Exhibit 49 was previously
24 in the larger sack which is for the record only marked
25 State's Exhibit 49-A. I ask you to compare the number

1 and the initials on the sack and see whether or not they
2 are consistent with your records.

3 A. Yes. I recognize the correct case number, the
4 correct item number, and I see the initials of Benita
5 Harwood.

6 Q. You recognize her initials?

7 A. Yes, I do.

8 Q. Now, do your records reflect that a portion of
9 the blanket was removed for testing purposes?

10 A. Yes.

11 Q. And what type of -- why was the portion of the
12 blanket removed? Was there some -- can you describe what
13 it was that testing -- what the material was that the
14 testing was done on; that is, why the test was done on a
15 certain portion of the blanket?

16 A. Her notes reflect that she observed two
17 different areas of stain on the blanket that were
18 suspicious of possibly being seminal stains.

19 Q. And those stains, did her test results, are
20 they reflected in the reports?

21 A. Yes.

22 Q. Would you tell the jury what that test result
23 showed?

24 A. Showed that one of the two areas was positive
25 for a seminal stain on -- by a quick color test. The

1 other was not.

2 Q. Okay. The -- there was one stain, then, on the
3 blanket that was consistent with seminal fluid?

4 A. Yes.

5 Q. Now I want to direct your attention to Thursday
6 the 23rd of June, 1933, at about 3:00 p.m., and ask you
7 whether or not her records reflect that she obtained a
8 blood and saliva sample from the suspect, Donald Wayne
9 Good, in this case.

10 A. That is correct.

11 Q. And I'll ask you further if your records
12 reflect whether or not on the vaginal swab or the
13 vaginal -- and/or the vaginal smear, if any evidence was
14 found on either of those two exhibits.

15 A. It was.

16 Q. Would you give the jury that information,
17 please.

18 A. On the vaginal swab we will perform a test
19 which looks for the presence of seminal fluid. The test
20 was positive for seminal fluid, then the vaginal -- did
21 you ask me on the vaginal smear?

22 Q. Yes, sir.

23 A. Then a vaginal smear, which was simply obtained
24 by the physician by spreading the part of the swab, the
25 contents on the swab onto a microscope slide, this would

1 have been stained, it was stained, examined under the
2 microscope, and they found -- Mrs. Harwood reported the
3 presence of spermatozoa, the male reproductive cells.

4 Q. And again would that be consistent with recent
5 intercourse?

6 A. It is consistent with intercourse, yes, sir.

7 Q. And with regard to the anal smear, were there
8 any findings in that regard?

9 A. The anal swab, there was no -- well, let me
10 check just a second --

11 Q. Anal smears?

12 A. -- no -- well, actually just the smear?

13 Q. Yes, sir.

14 A. On the anal -- the smear obtained from the anal
15 sample, she did report the presence of spermatozoa.

16 Q. All right. And on the jumpsuit, was any
17 portion of the jumpsuit removed?

18 A. Yes.

19 Q. And what portion of it was?

20 A. It was a stain that was observed in the crotch
21 area of the blue jumpsuit.

22 Q. And what were the findings from the crotch
23 area?

24 A. That it was positive both for seminal fluid and
25 the presence of spermatozoa.

1 Q. And again would that finding be consistent with
2 the vaginal cavity draining onto the crotch if there were
3 no underwear on at that time?

4 A. Yes.

5 Q. Now, with regard to the blanket, I believe I
6 may have already -- well, let me with regard to the
7 blanket, I believe you testified that there was,
8 consistent with seminal fluid, and was there -- was it
9 also consistent with -- or was spermatozoa found on the
10 blanket also? Did you check that?

11 A. Spermatozoa were found in the stain on the
12 blanket, yes, sir.

13 Q. And was the -- was she able to do a, according
14 to her report, able to do a blood grouping on the seminal
15 fluid and spermatozoa found on the blanket?

16 A. Yes.

17 Q. What was that blood grouping?

18 A. She found that the seminal stain was consistent
19 with a person who was blood group O and secretor leaving
20 the seminal stain on the blanket.

21 Q. Would you explain to the jury what you mean by
22 the word secretor.

23 A. Eighty percent of us are secretors by heredity.
24 If we are supplied at birth with the SE gene, that means
25 we're a secretor. We carry our blood type in body fluids

1 other than our blood. For instance, gastric juices,
2 seminal fluid, bile, saliva, --

3 Q. Sweat?

4 A. -- perspiration.

5 Q. Pardon me.

6 A. Perspiration. If I said vaginal secretions,
7 cerebral-spinal fluid, the non-blood fluids of your body
8 of a secretor would carry your blood type. Some of these
9 fluids are far stronger than blood group substance, and
10 gastric contents and seminal fluid and saliva are three
11 of the strongest carriers of your blood type if you're a
12 secretor.

13 Q. All right. So some of the others, like for
14 instance urine, may carry it but nowhere near as strongly
15 as other types of --

16 A. Urine and vaginal secretions are relatively
17 weak compared to the others, yes.

18 Q. Now, do you allow people just to -- for
19 instance, do you allow rapists to come out to the lab and
20 find out whether or not they're secretors?

21 A. Mr. Scott, we are looking at people who are
22 brought by -- who are citizens accused of sexual assault.
23 Rape is a legal term.

24 Q. Right. I understand that. But what I'm asking
25 you is, if someone who just gets out of prison -- I'm

1 not -- let me just withdraw that.

2 If someone wanted to find out, say I wanted to
3 find out whether or not I was a secretor or a
4 nonsecretor, would you just allow me to come out to the
5 laboratory and be tested to find out whether or not I was
6 a secretor or not, or is that something that you all
7 don't go around advertising in the paper?

8 A. No, sir. We're the county crime laboratory, in
9 essence, so with taxpayer money we are performing the
10 analyses for law enforcement agencies. We can and do do
11 them for defense attorneys when requested, so we're doing
12 them not for any citizen who might come by and ask, but
13 we will do it for a bona fide authority like an attorney
14 or law enforcement agency.

15 Q. What I'm getting at is, is it fair to say that
16 most of the public, people just walking down the street,
17 probably don't know whether they're secretors or
18 nonsecretors? Is that a fair statement?

19 A. I'm sure that's true, yes, sir.

20 Q. All right. If a person knows that he's a
21 nonsecretor, then if he goes out and rapes somebody he
22 doesn't have anything to worry about, does he?

23 A. That's not true.

24 Q. Well, explain that.

25 A. Because there are other blood group substances

1 that can be present in seminal fluid that aren't
2 dependent upon you being a secretor or not. So there are
3 more sophisticated tests which are possible at this point
4 in time that maybe we weren't doing at an earlier -- some
5 three or four or five or 10 years ago, yet there are
6 other markers we can use.

7 Q. Very good. Thank you. Do her records reflect
8 whether or not this suspect, Donald Wayne Good, was or
9 was not a secretor?

10 A. Does reflect that.

11 Q. What is the result in that regard?

12 A. Her findings were that Donald Wayne Good is a
13 secretor and he is blood group O.

14 Q. Therefore, would the evidence that she obtained
15 be consistent with the defendant having left seminal
16 fluid and spermatozoa on the blanket? That is consistent
17 with him?

18 A. Mr. Good is in that body of male, white males
19 who could have left that seminal stain on the blanket.

20 Q. Now, the same could be said for one-third of
21 the white male population; is that true?

22 A. That is approximately correct, figuring
23 secretor, that 30 percent of us are secretors and then
24 the percentage of people in the population who are blood
25 group O, that would mean about one-third of the Caucasian

1 male population would fall in that percentage.

2 Q. So if you have three white males, the odds of
3 hitting the right one are about two in one against?

4 A. Or one in three, yes, sir.

5 Q. All right.

6 A. That's about right.

7 Q. Now, is the -- with regard to the O-secretor,
8 is the same true of the vaginal and anal evidence, is it
9 consistent with the defendant or any other white male
10 that fits into that category, like we've said, one-third
11 of the white male population?

12 A. Sir, repeat your question.

13 Q. Yes, sir. The results on the -- that were
14 found by the doctor and Mrs. Harwood, were they, the
15 vaginal and anal results there with regard to seminal
16 fluid and spermatozoa, also consistent with an O-secretor
17 such as the defendant?

18 A. The only one that we did the typing on was the
19 vaginal swab.

20 Q. All right.

21 A. Of the group that you mentioned.

22 Q. Okay.

23 A. And on the vaginal swab, we found evidence of
24 blood group A and blood group O.

25 Q. All right.

1 A. Which, in the vernacular, it may in the report
2 have been said to be H, but it is blood group A and O --

3 O. All right.

4 A. -- substances were found on the vaginal swab.

5 O. And is that consistent with again one-third of
6 the white male population, or can you tell anything about
7 secretor status on that?

8 A. No, you cannot put the percentage on that
9 because it can easily be a mixture of the vaginal
10 secretions plus the seminal fluid.

11 O. All right.

12 A. Because you have both A and O blood group
13 substances.

14 O. All right. So it's back to the blanket being
15 the one where you have the O-secretor status?

16 A. The stain on the blanket had to come from an
17 O-secretor.

18 O. All right.

19 A. But the information on the vaginal swab does
20 not preclude the defendant from having had recent
21 intercourse.

22 O. All right. Okay. I think that's all I need,
23 sir. Thank you very much.

24 MR. SCOTT: And I'll pass the witness, Your
25 Honor.

1 THE COURT: Sheriff, remove the gag from the
2 defendant so he may cross-examine the witness.

3 Again, before you remove the gag, Mr. Sims --

4 Mr. Good, I remind you that the purpose that
5 you're here for is to represent yourself, and the
6 next proper procedure for you would be to
7 cross-examine the State's witness on anything that's
8 relevant to this proceeding, or that he covered in
9 his testimony.

10 Remove the gag.

11 THE DEFENDANT: Your Honor, if it pleases the
12 Court, let the record reflect that I would hereby
13 respectfully request the presence of my
14 adviser-advocate, Daniel Clark, to assist me with my
15 defense of self-representation.

16 THE COURT: Request denied. Do you have any
17 questions of this witness?

18 THE DEFENDANT: Your Honor, if it pleases the
19 Court, let the record reflect that I would hereby
20 respectfully request the presence of my
21 adviser-advocate, Daniel Clark, to assist me with my
22 defense of self-representation.

23 THE COURT: Denied. One more time, do you have
24 any questions of this witness?

25 THE DEFENDANT: Your Honor, if it pleases the

1 Court, --

2 THE COURT: Gag the defendant.

3 THE COURT: You're excused, Doctor.

4 MR. SCOTT: Thank you for coming down.

5 Next would be Investigator Fred Curtis.

6 THE COURT: Before you call that witness, I'd
7 like for counsel to approach the bench, including
8 Mr. Good.

9 (Whereupon, an off-the-record discussion
10 was had at the bench.)

11 THE COURT: Take a seat on the stand, Officer.
12 You may proceed.

13 Whereupon,

14 FRED CURTIS,

15 called as a witness in behalf of the State, having been
16 first duly sworn by the Court, was examined and testified
17 on his oath, as follows:

18 DIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q. Would you state your name for the jury, please,
21 sir.

22 A. Fred Curtis.

23 Q. And how old a man are you, sir?

24 A. Thirty-seven.

25 Q. [REDACTED]