

1 that time. He wasn't home at the time of the arrest.

2 Q Did you tell that -- did you do anything to try
3 to investigate the case to try to get more evidence against
4 Mr. Bosquette after the identification by Miss Gurr?

5 A No, I did not.

6 Q You felt that that was enough right there, that
7 you had a good enough case and you could go on to other
8 things; is that right?

9 A In -- in my opinion, yes, the case was solid
10 enough.

11 Q Thank you very much, sir.

12 THE COURT: Redirect?

13 MR. SMITH: No further questions.

14 THE COURT: Witness, step down. Thank you.

15 Call your next witness.

16 MR. SMITH: Judge, the State would call Mr.
17 James McNamara.

18 JAMES J. McNAMARA

19 having been produced was first duly sworn as a witness and
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q Would you please state your full name?

24 A My name is James J. McNamara.

25 Q What's your occupation?

1 A I'm a Forensic Serologist with the Florida
2 Department of Law Enforcement at Sanford Regional Crime
3 Laboratory.

4 Q How long have you been so employed?

5 A Since July of 1978.

6 MR. SMITH: Your Honor, I believe Mr. Morgenstern
7 is willing to stipulate that Mr. McNamara is an expert
8 in body fluids, the examination of body fluids.

9 MR. MORGENSTERN: That's correct, Your Honor.

10 THE COURT: In other words, you're stipulating
11 that he's an expert serologist.

12 MR. MORGENSTERN: Yes, Your Honor, I will so
13 stipulate.

14 THE COURT: All right, sir.

15 BY MR. SMITH:

16 Q Now, for the jury, Mr. McNamara, would you please
17 explain what's the nature of your work?

18 A Yes. A Forensic Serologist is an individual who
19 examines blood and other body fluids, primarily blood and
20 saliva, not only to identify what these substances or
21 stains are, but also, when possible, to go a little bit
22 further and conduct a series of grouping tests or typing
23 tests and this is done in an effort to show possible
24 sources of those stains or to eliminate people as being
25 sources of those body fluid stains.

1 Q Okay. So, what would you say the significance
2 of that information that you obtain from analyzing these
3 fluids would be?

4 A The significance? Well, in -- courts of law, we
5 are often called upon to testify as to the results of those
6 testings, not only in identifying, but also, in grouping,
7 the significance, I guess, being in an attempt to establish
8 a consistency between the particular stain and the
9 individual. There is no way in the field of serology that
10 we can say with absolute certainty that a body fluid stain,
11 such as blood or semen, is from a particular individual,
12 as can be done in the field of latent fingerprints or
13 firearms; but, comparisons in the field of firearms
14 examination; however, we can show a consistency possibility
15 of one individual being the source of the stains.

16 Q Okay. So, what you're saying, it's not an exact
17 science, but it's an aid in investigation; is that a fair
18 statement?

19 A I believe I would say it's an exact science. It
20 is definitely an aid in investigation; however, it, again,
21 cannot point to a particular individual with absolute
22 certainty as to being the source of those stains.

23 Q Okay, that's what I meant.

24 A Okay, that's correct.

25 Q Thank you. Mr. McNamara, did you have occasion

1 to examine some evidence that was sent up to you by
2 Detective Miller of the Monroe County Sheriff's Department
3 in the case of the State of Florida versus Orlando
4 Bosquette?

5 A Yes, sir, I did.

6 Q Can you tell us what evidence you did receive?

7 A On July 12th of 1982, our laboratory received
8 one pair of trousers represented as being from Orlando
9 Bosquette, one pair of panties represented as being from
10 Margaret Curr, one pajama top represented as being from
11 Margaret Curr and an additional pair of panties also
12 represented as being from Margaret Curr.

13 Q Okay. What did you do?

14 A Or --

15 Q Go ahead.

16 A Excuse me. There were two subsequent submissions
17 at a later date. Did you want me to mention those now?

18 Q Please, yes.

19 A On October 15th of 1982, the laboratory received
20 blood, a liquid blood standard or liquid blood sample and a
21 saliva sample from Orlando Bosquette and the same, that is,
22 a liquid blood sample and a saliva sample, also, from
23 Margaret Curr.

24 Q Okay. What did you do with the evidence you
25 received?

1 A The original items that were submitted to the lab
2 were examined for the presence of any body fluids, pri-
3 marily blood and semen, and the -- results of those
4 examinations were on the pair of trousers, represented as
5 being from Orlando Bosquette, a small reddish-brown stain
6 was positively identified as being human blood. No semen
7 was found on this exhibit.

8 Q Okay. Did you receive any underwear from
9 Orlando Bosquette that you know of?

10 A No, sir, I did not.

11 Q Okay, thank you. Go ahead. What did you do with
12 the rest of the evidence?

13 A There were two pairs of panties. One was not
14 examined. The report indicated that it was accidentally
15 sent to the laboratory and was not the correct pair of
16 panties.

17 The other pair of panties were examined. Semen
18 was identified on the tan panties by the presence of
19 spermatozoa, a pre-productive cell. Grouping tests
20 conducted on these panties indicated the presence of A and O
21 postive factor in two separate cut areas that were tested.
22 The other two indicated the presence of no blood group
23 factors and additional grouping tests for enzymes found
24 in semen that also can be found in a laboratory, those
25 results were inconclusive. So, semen was identified on

1 the panties and grouping tests indicate the group of A
2 and O blood group factors.

3 Q In two spots on the panties, you found blood
4 groups A and O; is that correct?

5 A That's correct.

6 Q Correct me if I'm wrong. Two other spots on the
7 panties, I believe you said you could not detect any
8 blood grouping factors?

9 A That's correct.

10 Q Okay.

11 A The red pajama top, the -- my Exhibit No. 3, was
12 examined also for the presence of any body fluids. Semen
13 was also identified on the red pajama top. Again, by the
14 presence of the spermatozoa, the male reproductive cell.
15 And grouping tests on this stain also failed to show the
16 presence of any blood group factors.

17 Q Okay. So, up to this point, we have two spots
18 on the panties with A and O blood group factors, two
19 spots on the panties with no blood group factors; is that
20 correct?

21 A I could say correct as to two cut areas or two
22 tested areas, other than the two spots.

23 Q Two, okay. And one or two areas on the pajama
24 top?

25 A Two areas on --

1 Q Again, with no blood group factors?

2 A That's correct. No blood group factor was
3 detected.

4 Q Okay. What else did you do?

5 A That concluded the examinations that I conducted
6 on the items of Submission Number One that was submitted
7 to the laboratory.

8 Submission Number Two, which consisted of blood
9 and saliva samples from both individuals, the results of
10 those examinations, examination of the saliva sample and
11 liquid blood sample from Orlando Bosquette were repre-
12 sented to me as being from Orlando Bosquette indicate
13 that he is a Group O non-secreater.

14 Q What does that mean?

15 A The -- blood group O is one of four blood types
16 with which most people are familiar, because of it's
17 clinical importance in transfusions and the four groups
18 or types are A, A-B, B, and C and O is the most common
19 of those four; approximately, very approximately 45-
20 percent of the population are of blood type O. It is the
21 most common.

22 The non-secreater refers to the fact that 80-
23 percent of the population secrete in their body fluids
24 other than blood through blood type. That is, their
25 vaginal fluid or semen or saliva could be typed and you

1 could obtain a blood type simply from that fluid and not
2 need a liquid blood sample. Twenty-percent of the
3 population, for some reason, does not secrete that blood
4 type and they are called non-secreters and Mr. Bosquette,
5 from the grouping on the blood and the type attempt on
6 the saliva, it can be typed that he's a Type O non-
7 secreter.

8 Q Okay. Based on the tests you performed to the
9 clothing and the blood and saliva samples you received
10 from Mr. Bosquette, the defendant in this case, were you
11 able to draw any conclusions?

12 A The only conclusion I could draw is that the --
13 the stains where no blood group factors were found, that
14 is, on the pajama top and two areas or two cut areas of
15 the pair of panties, are consistent at least in that no
16 blood group factors were found and Mr. Bosquette is a
17 non-secreter. However, the other two cuttings or
18 tested areas in the panties, where the A and O blood
19 group factors are, are inconsistent with being from Mr.
20 Bosquette, in that he is a Type O non-secreter.

21 Also, the examination on the saliva sample and
22 liquid blood sample indicated that she also is a Type O
23 non-secreter. So, those blood group factors found in the
24 panties, in the crotch of the panties, could also not be
25 from her, being that she is a non-secreter.

1 Q Okay, let me get this straight, Mr. McNamara.
2 What you're saying is, two spots on the pajama top and two
3 spots on the panties are consistent, at least, consistent
4 with the secretions of Mr. Bosquette; is that -- a fair
5 statement?

6 A That is a fair statement. Again, a -- the
7 finding of no blood group factors on those stains, it
8 could not be said with certainty that the individual who
9 placed those semen stains there is a non-secreater; but,
10 yes, that is a likely or possible explanation.

11 Q And I think it's also -- correct me if I'm
12 wrong -- fair to say that the other two cuts that were
13 tested on the panties that I believe you were -- said
14 were A and O factor?

15 A That's correct.

16 Q Are inconsistent with Mr. Bosquette; is that a
17 fair statement?

18 A That's correct. That's a fair statement.

19 MR. SMITH: No further questions at this time,
20 Judge.

21 THE COURT: Cross examination.

22 CROSS EXAMINATION

23 BY MR. MORGENSTERN:

24 Q Mr. McNamara, I want to thank you for coming
25 down here and testifying today.

1 A You're welcome.

2 Q Now, when you say cuttings -- spots was Mr.
3 Smith's word, you said cuttings -- you don't mean that
4 these were separate areas. You just took different
5 samples of the same -- explain a little bit more about
6 what you mean by that.

7 A Well, the term cuttings that I would rather use,
8 or tested areas, is used to indicate that I'm
9 not saying these are definite, separate stains. There was
10 very much similar staining to the -- on both items,
11 actually, but especially the panties, on both the nylon
12 portion or the backing of the panties, in addition to
13 the cotton crotch. The panel crotch area of the panties,
14 also, where they were one continuous large stain or
15 several small stains, I couldn't say with certainty.
16 They appeared to me and were marked and circled by me as
17 being separate individual stains; okay? But, the tested
18 cuts were taken from some of those circled areas and I
19 cannot be certain that the entire thing was not one,
20 continuous stain.

21 Q Do you remember having a telephone conversation
22 with me about this -- about this report some time in the
23 last two weeks?

24 A Yes, I think we've had several.

25 Q Okay. Do you remember telling me that on the

1 panties, there was a continuous and large stain on the
2 panties?

3 A Well, there was a large, stained area. If I
4 could see the item, I could show you.

5 Q Can we look at it? Can you tell at this point?

6 A Sir?

7 Q Are they marked?

8 A They should be marked, yes.

9 Q I don't -- what number would that be?

10 THE COURT: Clerk keeps that.

11 MR. MORGENSTERN: Number 5.

12 BY MR. MORGENSTERN:

13 Q Can you tell from this bag whether this is the
14 panties that we're talking about (tendering exhibit to
15 the witness)?

16 A Yes, it is.

17 Q Okay. Now, we can't -- we can't really see right
18 here, can we, the actual staining here. Can you pick it
19 out better than I can? Was it -- the actual staining --
20 clear at the time you did the tests?

21 A No. The first test done in identifying the
22 semenal stain is just simply touch or feel and also a
23 visual test for crusty or stiff, sometimes yellowish-
24 colored stains. In addition, we can use a UV light, an
25 ultraviolet light, to detect the presence of those stains.

1 Seminal fluids contain some consistencies that fluoresce
2 under lighting. That also will aid us.

3 In the crotch area, there is one continuous
4 stain that I have sampled and marked as Cutting No. 3 or
5 Tested Area No. 3, with a small gap between that and a
6 smaller stain, which I have marked as No. 4, both of
7 those being in the cotton crotch area of the panties.
8 Here and in the nylon portion of the back panel being
9 there, I regard them as separate stains (indicating).

10 The discoloring is invisible. They were also
11 tested and found to contain semen.

12 Q Okay. This does appear to be -- so, you're not
13 saying that there was no semen in the space -- they seem
14 to be in a long, straight line here (indicating).

15 A That's correct.

16 Q And --

17 A That's probably why I had said it was one
18 continuous stain. They are all pretty much in the same
19 area.

20 Q And all in a pretty much straight line, too;
21 right?

22 A That's correct. But, they are separate areas.

23 Q You're not saying -- did you test the in-between
24 area? You don't know whether this was really continuous
25 or not; right?

1 A The only test on the in-between area was visual
2 and touch, along with the UV.

3 Q Okay. Thank you. Is that the bag?

4 A Yes, sir.

5 Q Now, when you say that -- that in two of those
6 areas, the A and O blood groups were found and in two of
7 the areas, the A and O blood groups are not found, you're
8 not saying that you can tell from that that these are
9 from different sources; you're --

10 A No, sir.

11 Q You just -- it could -- you can tell that A and O
12 group stain definitely did not come from somebody like
13 Mr. Bosquette that's A and O non-secreater; right?

14 A That's correct.

15 Q But, you can't say the other way around, that
16 the -- that the -- the fact that the two other areas did
17 not happen to have A and O in them, did not come from the
18 same person, source and time. It could very well have
19 come from the same person, source and time and you just
20 didn't find any.

21 In other words, A and O blood groups are not
22 rampant all through there. You wouldn't be sure to find
23 them. It could easily be the same source and time and you
24 not have found them in one of the cuttings; right?

25 A The statement is basically correct. Finding no

1 blood group factors or negative results is not used as a
2 strong or positive indication of what you're dealing with,
3 whereas finding the blood group factors, the A and O --
4 would indicate the secretions being from a secreater.
5 Mrs. Curr was A/O non-secreater, as was Mr. Bosquette.
6 So, those findings of the A and O factors, a positive
7 result is a good result and enables you to make a call
8 as to a possible source.

9 What you're saying, I think, is where a negative
10 source would not enable you to say that it's definitely
11 from a non-secreater.

12 Q But, you can say the A and O definitely is not
13 from a non-secreater?

14 A That's correct.

15 Q Also, likewise, the stain on the -- the pajama
16 finding that -- in fact, that you didn't find in the two
17 areas that you cut any A and O groups does not mean that
18 that was not semen from somebody in an A and O group.
19 It could have come from the same person from the spots
20 on the panties that he had A and O group; right?

21 A Yes, sir, correct. That is a possibility. It
22 is also a possibility that the opposite is true and they
23 were from a non-secreater.

24 Q But, you wouldn't consider it proof one way or
25 another in a court of law.

1 A No, sir, no, sir.

2 Q So, at least some of those semen stains could
3 not possibly have come from Mr. Bosquette; right?

4 A In my opinion, that's correct.

5 Q Thank you.

6 THE COURT: Redirect?

7 MR. SMITH: Yes, sir, Judge.

8 REDIRECT EXAMINATION

9 BY MR. SMITH:

10 Q Mr. McNamara, on the other hand, at least three
11 of those stains that you examined could have come from
12 Mr. Bosquette; is that not true?

13 A That's correct, yes, sir.

14 MR. SMITH: No further questions, Judge.

15 THE COURT: Recross?

16 MR. MORGENSTERN: No, Your Honor.

17 THE COURT: Witness, step down. Thank you.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Call your next witness.

20 MR. SMITH: Your Honor, at this time, the State
21 would rest.

22 THE COURT: Jury out?

23 MR. MORGENSTERN: May we approach the bench?

24 THE COURT: All right, sir.

25 (At a side bar conference, the following further