

COURT OF APPEAL - STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION II

THE PEOPLE OF THE STATE OF CALIFORNIA, )  
Plaintiff/Respondent, )  
-vs- )  
HERMAN ATKINS, )  
Defendant/Appellant. )

DCA NO. E 006159  
CASE NO. CR 28832  
VOL. I of II  
PAGES 1 - 282

APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY  
HONORABLE WILLIAM R. BAILEY, JR., JUDGE PRESIDING  
REPORTER'S TRANSCRIPT ON APPEAL  
AUGUST 22, 23, 24 & 25, 1983

APPEARANCES OF COUNSEL:

For the Plaintiff/Respondent:

OFFICE OF THE ATTORNEY GENERAL  
State of California  
Department of Justice  
110 West "A" Street, Suite 600  
San Diego, CA 92101

-and-

OFFICE OF THE DISTRICT ATTORNEY  
County of Riverside  
4080 Lemon Street, 2nd Floor  
Riverside, CA 92501

For Defendant/Appellant:

In Propria Persona

**COPY**

SUSAN MORRIS, C.S.R.  
OFFICIAL COURT REPORTER

1 RIVERSIDE, CALIFORNIA, THURSDAY, AUGUST 25, 1988; 10:25 A.M.

2 --oOo--

3 THE COURT: All right. All of our jurors are  
4 present. We are ready to proceed, so the People at this time  
5 may call the next witness.

6 MR. BENTLEY: Your Honor, the People call Mr. Hall.

7 THE COURT: We will have him come forward and be  
8 sworn, if you will, sir.

9 THE CLERK: Please raise your right hand.  
10 You do solemnly swear that the testimony you are about to give  
11 in the matter now pending before this Court shall be the truth,  
12 the whole truth, and nothing but the truth, so help you God?

13 THE WITNESS: Yes, I do.

14 THE CLERK: Thank you. Please be seated.  
15 Please state your name and spell it all forward report.

16 THE WITNESS: My name is James I. Hall, J-a-m-e-s  
17 H-a-l-l.

18 THE COURT: All right.

19  
20 JAMES HALL,  
21 called as a witness by and on behalf of the People, having been  
22 first duly sworn, testified as follows:

23  
24 DIRECT EXAMINATION

25  
26 BY MR. BENTLEY:

27 Q Mr. Hall, what's your occupation?

28 A I'm a criminalist, currently employed by the State

1 of California, Department of Justice, Riverside laboratory.

2 Q What is a criminalist?

3 A A criminalist is a forensic scientist that analyzes  
4 and interprets physical evidence.

5 Q What do you mean by physical evidence?

6 A Evidence of a tangible nature that can be examined  
7 in a laboratory.

8 Q Would that include blood samples, things like that?

9 A Yes, it would.

10 Q Have you had the opportunity to examine physical  
11 evidence in the case of People versus Herman Atkins?

12 A Yes, I have.

13 Q On your right, I have two boxes of evidence. I  
14 believe they're marked People's No. 24 and 25. I would like you  
15 to look at those two boxes containing evidence.

16 Do those look familiar to you?

17 A Yes.

18 Q Why do they look familiar to you?

19 A There is a number written on each of the boxes that  
20 corresponds to the number assigned to this case by our  
21 laboratory.

22 Secondly, my initials, J. H., are written in various  
23 places on the box, on each of the boxes.

24 Q I would like you to look first at People's No. 24.  
25 What person would that refer to?

26 A The name of Kelly McKinley is written on the piece  
27 of paper taped to the box.

28 Q Now, when you saw that box, was it in a sealed

1 manner?

2 A Yes.

3 Q Did you unseal the box?

4 A Yes.

5 Q I'd like you to tell me what the other box refers  
6 to.

7 A This is from Herman Atkins. The name is written on  
8 the piece of paper taped to the box.

9 Q Did you likewise receive that in a sealed manner?

10 A Yes, I did.

11 Q Did you look at the contents of those two boxes?

12 A Yes, I did.

13 Q Did you reseal them?

14 A Yes, I did.

15 Q Do you recall what the contents is in People's 24?

16 A Yes, I do.

17 Q What would that be?

18 A There is a saliva sample, a vaginal swab, oral  
19 swab, smear slides, exemplar pubic hair, pubic area combings,  
20 exemplar head hair, facial hair, fingernail scrapings, and a  
21 hair sample.

22 Q What about People's 25?

23 A Blood sample, saliva, pubic hair, exemplar pubic  
24 combings, exemplar head hair. That's it.

25 Q The contents of the boxes -- did you do anything  
26 with the boxes?

27 A Yes, I did.

28 Q Did you do some comparisons with those?

1 A Yes.

2 Q Would those be scientific comparisons?

3 A Yes.

4 Q What is it that qualifies you to do those things?

5 A Well, I have a bachelor's degree in chemistry from  
6 the University of California at Riverside. During my senior  
7 year I was a student intern at the laboratory in which I'm  
8 currently employed.

9 Following graduation from college, I was hired as a  
10 criminalist by the Ventura County Sheriff's Department, where I  
11 remained for a little less than four years.

12 After that, I was hired by the Department of Justice,  
13 where I have been now for a little over seven years.

14 During that time, I have received on-the-job training in  
15 various areas of forensic analysis, including the analysis of  
16 forensic serology samples, that is, blood samples, and other  
17 body fluids, hairs, and things of that nature. I have been  
18 doing that now for about the last five or six years.

19 Q Now, you mentioned that you had some expertise in  
20 blood samples. Can you perform tests to determine blood types  
21 of a person if you have a sample?

22 A Yes.

23 Q Could you explain to us a little bit about blood  
24 types?

25 A Well, there are several different factors that we  
26 can examine the blood. The most common that's known by most  
27 people is the ABO system. That's commonly known as the blood  
28 type, whether a person is type A, O, B, or AB. That analysis

1 can be performed.

2 Secondly, there are various enzymes that are found in  
3 blood. One of those is called PGM. There is -- there are  
4 three basic PGM types that the majority of people will fall  
5 into. There are PGM sub-types. There are about ten or so PGM  
6 sub-types that a majority of people will fall into.

7 Q These blood types, can you determine them from  
8 blood samples, I take it?

9 A Yes.

10 Q What about other bodily fluids?

11 A Other body fluids may or may not contain the PGM  
12 enzyme that I spoke of earlier. Vaginal fluid and seminal fluid  
13 do contain the enzyme at various concentrations. Saliva does  
14 not.

15 If a person is determined to be a secretor, which about  
16 80 percent of the population are, a secretor will secrete their  
17 ABO blood type into other body fluids, such as saliva, seminal,  
18 and vaginal fluid.

19 If a person is, for example, a type A secretor, they will  
20 secrete type A and type A substances into their other body  
21 fluids.

22 Q What do you mean by the word "secretor"?

23 A I just explained that. These people will secrete  
24 or produce their ABO blood typing factors into other body  
25 fluids.

26 Q Now, based on the evidence that you have with  
27 People's 24 and 25, were you able to determine the blood  
28 composition of Kelly McKinley?

1 A Yes, I was.

2 Q Could you tell us what you found?

3 A Kelly McKinley was a type A. She was a secretor,  
4 and was PGM 2+1+.

5 Q Also based upon --

6 THE COURT: Let's go back and get that again.

7 THE WITNESS: Type A, she was a secretor, and her  
8 PGM type is 2+1+.

9 THE COURT: All right.

10 Q (By Mr. Bentley) Based upon the samples that you  
11 received, were you likewise able to determine the blood  
12 composition of Herman Atkins?

13 A Yes, I was.

14 Q What did you find out?

15 A His types are the same as hers, ABO type A for the  
16 blood; he is also a secretor, and PGM type 2+1+.

17 Q Did you also have the opportunity to look at some  
18 other samples where fluids were found in that particular  
19 evidence?

20 A Yes, I did.

21 Q Did you look at a sample from a sweater?

22 A Yes, I did.

23 Q What did you find out about the sample from the  
24 sweater?

25 A There is a semen stain found on the sweater. That  
26 stain also gave indications of the presence of saliva. I  
27 performed the ABO typing on the stain and found evidence of type  
28 A secretor, and no PGM activity was detected on that stain.

1 Q Would that be unusual not to find the PGM activity

2 A Not in particular, no.

3 Q Why is that?

4 A The PGM enzyme is not very stable. It just doesn't  
5 last that long. If the material producing that particular  
6 enzyme was of a low PGM concentration, we may not be able to  
7 detect it, and it could disappear on normal degradation.

8 Q Did you have an opportunity to look at a vaginal  
9 smear?

10 A Yes, I did.

11 Q What did you find out about that?

12 A Well, the vaginal smear would be a smear slide in  
13 which there was numerous spermatozoa cells that were found,  
14 which, of course, you know, would be produced by a male human  
15 being than a female. I assume you mean the vaginal swab?

16 Q Yes.

17 A The vaginal swab also had the presence of semen.  
18 The ABO type on the swab was from a type A secretor and the PGM  
19 type on the swab was 2+1+.

20 Q Would that be the same types of both persons that  
21 you previously mentioned?

22 A That's correct.

23 Q Based on the information that you received, what  
24 kind of conclusions could you tell me about the swab and the  
25 blood type of the two persons?

26 A Well, the blood type of the swab was the same blood  
27 type of the two individuals. That tells me that possibly the  
28 semen don't -- or could be of that blood type combination, or



1 the activity that I detected could have come from the victim  
2 herself, or it could have come from a combination of individuals  
3 with those blood types.

4 Q Do your results exclude the person that you  
5 identified as Herman Atkins' blood?

6 A No, they don't.

7 Q Now, are there certain percentages of the  
8 population that have this ABO typing and the PM -- what you  
9 discovered?

10 A PGM.

11 Q PGM that you discussed?

12 A Yes, there are.

13 Q If I asked you to go to a diagram and diagram those  
14 on People's No. 26, could you do that?

15 A Certainly.

16 Q Maybe we can mark it afterwards.

17 THE COURT: Mark what?

18 MR. BENTLEY: The piece of paper on the right.

19 THE COURT: You want to mark the piece of paper?  
20 You want to have him write on it first?

21 MR. BENTLEY: That's what I just said. I'll have  
22 him write on it first.

23 THE COURT: All right. You want him to draw? Make  
24 it plenty large so the jury can read it.

25 THE WITNESS: Okay. On the left I have ABO type A.  
26 That can vary to some extent, depending upon the racial group  
27 that the person falls into. With Caucasians, white people, ABO  
28 type A is about 35.8 percent of the population. With black

1 people, a little less, 25.9 percent of the population for  
2 blacks.

3 Regarding the PGM data, I don't have any racial breakdown  
4 for that. PGM 2+1+ individuals are about 21.4 percent.

5 THE COURT: Do you distinguish between A negative  
6 and positive, or does that play a point?

7 THE WITNESS: That does not play.

8 THE COURT: That would be RM plus and minus?

9 THE WITNESS: RM factors play virtually no role in  
10 forensic work at all.

11 THE COURT: Okay.

12 THE WITNESS: Secretors are about 80 percent of the  
13 population. So dealing with white people, people who possess  
14 ABO type A, PGM type 2+1+, and are secretors, comes out to about  
15 6.1 percent of the general population.

16 With black people, because the ABO type is a little bit  
17 less than whites, we are dealing with about 4.4 percent.

18 These figures, by the way, are not meant to be exact.  
19 They are ballpark figures. They give us an indication of the  
20 population statistics.

21 Q (By Mr. Bentley) Thank you. You can sit back  
22 down.

23 I want to get this clear now. You would say 6.1 percent  
24 of the general population of white people would have this  
25 particular blood type?

26 A Approximately 6.1 percent, yes, give or take a  
27 little bit.

28 Q It would be 4.4 percent of the black population?

1           A       That's right.

2           THE COURT: I don't think he said blood type. I  
3 think he said all three.

4           Q       (By Mr. Bentley) That's what I meant to say, the  
5 total composition that you just described to us.

6           A       Yes.

7           THE COURT: The non-secretor would be in a  
8 different category?

9           THE WITNESS: Non-secretors are about 20 percent of  
10 the population. Their percentage would be considerably less.

11          Q       (By Mr. Bentley) Likewise, did you have an  
12 opportunity to look at some hair samples?

13          A       Yes, I did..

14          Q       Could you -- did you have any conclusions about  
15 what you found in the hair samples?

16          A       Yes, I did.

17          Q       What were those conclusions?

18          A       Two of the hair samples that you found -- I  
19 found, the hair samples from -- submitted from a carpet, two  
20 of the hair samples were consistent with head hair exemplars  
21 from Kelly McKinley and could have come from her. Other hairs  
22 were inconclusive.

23          Q       What do you mean by inconclusive?

24          A       That means I don't know who they came from.

25          Q       Did you have a sample from Herman Atkins to look  
26 at?

27          A       A very poor one, one that was not suitable for  
28 comparison. Very short, dark fragments.

1 MR. BENTLEY: I have no further questions.

2 THE COURT: Cross-examination.

3

4

CROSS EXAMINATION

5

6 BY MS. BROADY:

7

8 Q None of the hair that was found in the carpet

9

10 A His hair was -- his hair exemplars were extremely  
11 short, dark fragments. They were not suitable for comparison.  
12 Assuming his hair then was at the same length it is now, then  
13 those hairs would not have come from him.

14

15 Q You got all the hair samples, and everything are in  
16 these little kits?

17

18 A Let me refresh my memory there. The hair exemplars  
19 were in the kits. Some tape lifts from a carpet were submitted.  
20 Tape lifts would be Scotch tape where the adhesive side is  
21 dabbed over the carpet and any loose evidence like hairs or  
22 fibers would be connected. The tape lifts from the carpet were  
23 submitted in a separate item.

24

25 Q Did you have pubic combings from both parties?

26

27 A Yes, I did.

28

29 Q Was there any match with Mr. Atkins' pubic --

30

31 A No, there was no evidence of any pubic hair  
32 transfer.

33

34 MS. BROADY: Thank you. Nothing further.

35

36 MR. BENTLEY: I have no questions.

37

38 THE COURT: May this witness be excused?

1 MS. BROADY: No objection.

2 MS. BROADY: Yes, your Honor.

3 THE COURT: You are excused.

4 All right. People may call their next witness.

5 MR. BENTLEY: People call Deputy Nash, your Honor.

6 THE COURT: Come forward and be sworn.

7 THE CLERK: Please raise your right hand.

8 You do solemnly swear that the testimony you are about to give  
9 in the matter now pending before this Court shall be the truth,  
10 the whole truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. Please be seated. Please  
13 state your name and spell it.

14 THE WITNESS: Richard T. Nash. R-i-c-h-a-r-d  
15 N-a-s-h.

16 THE COURT: All right.

17  
18 RICHARD T. NASH,  
19 called as a witness by and on behalf of the People, having been  
20 first duly sworn, testified as follows:

21  
22 DIRECT EXAMINATION

23  
24 BY MR. BENTLEY:

25 Q Mr. Nash, what's your occupation?

26 A I'm a deputy sheriff.

27 Q Where do you work?

28 A Riverside County Sheriff's Department, stationed in