

syphilis and there was a possibility it could have been transferred to Mrs. Neely?

A Possible.

Q Had he been the person that assaulted her?

A Well, we give the prophylactic preventive.

Q But you didn't know that initially though?

A I don't have the exact date.

Q I mean on August the 11th when you first treated her.

A No, sir, that was not prescribed that day, the best I remember.

MR. BISHOP: All right.

THE COURT: Come down.

MR. ACREE: May we excuse this witness?

THE COURT: You can go back to work, Doctor. Let the jury go to the jury room. (Whereupon the jury withdrew from the courtroom and a recess was had.)

Let the jury come back. Everybody be seated. (Whereupon the jury returned to the courtroom after recess.)

Call your next witness, Mr. Acree.

MR. ACREE: We call Benny Ray Blankenship.

BENNY RAY BLANKENSHIP, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ACREE:

Q Please state your full name.

A Benny Ray Blankenship.

Q Spell your last name.

A B-l-a-n-k-e-n-s-h-i-p.

Q In what capacity are you employed, Mr. Blankenship?

A Employed with the Columbus Branch of the State Crime Laboratory.

Q Columbus Branch?

A State Crime Laboratory.

Q Which is a division of what facility?

A Branch laboratory of the State's crime laboratory system.

Q Is that under the Georgia Bureau of Investigation System?

A That's correct.

Q What is your job or position with the State Crime Laboratory?

A I'm classified as a criminalist.

Q And what does it take to become a criminalist?

A I have a Bachelor of Science Degree in chemistry, I have about 18 months on-the-job training at Headquarters Lab in Atlanta, I have attended courses at the FBI Academy, Walter McCrone Institute in Chicago.

Q If you would, speak up and speak slowly.

A All right.

Q What does a criminalist do?

A I perform a variety of different kinds of tests on items of evidence which are brought to me by various law

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enforcement agencies, some of which are chemical in nature and a lot of them are microscopic examinations, also called a micro-analyst because of that.

Q Because you make microscopic examinations?

A Examinations, right.

Q What are your duties there?

A Basically what I just said. I perform various kinds of examinations, some with the aid of microscopes and some are chemical in nature.

Q How many years experience do you have being a micro-analyst or criminalist?

A I have been with the lab about five years.

Q In that five years, about how many tests have you performed?

A Of all kinds?

Q Yes, sir.

A Three, four thousand.

Q Okay. Have you ever performed an identification on hair?

A Yes, sir.

Q About how many tests have you done on that?

A Probably a thousand or fifteen hundred of those. Three or four thousand.

Q You have done a thousand or fifteen hundred identification tests on hair?

A Comparison is a better word.

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Q Comparison tests?

A Yes, sir.

Q What kind of test do you do and what are the steps involved?

A The first thing is that I use a microscope which is called a comparison microscope and basically that is a microscope which has two mounting stages. It allows you to mount two items and view them on the same screen at the same time and for that reason it is called a comparison microscope and that is what I use for my hair comparisons.

Q Have you ever been qualified as an expert in other courts in the identification of comparison of hair?

A Yes, sir.

MR. BISHOP: Your Honor, we would stipulate he is an expert.

THE COURT: Let the record reflect it's been stipulated that this -- stipulated and determined that this witness is an expert witness who works for the crime lab branch of the Georgia Bureau of Investigation.

Q (Mr. Acree contd.) Now, in your capacity as a criminalist or micro-analyst, did you have occasion to perform one of these comparisons or identification of hair in this case?

A In the case of John Jerome White, yes, sir.

Q Did you receive certain exhibits on which you performed these tests?

A Yes, sir, I did.

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Q You have those with you?

A The only exhibits I have are some hair slides which I made up myself in the lab. Also have a container which I received some hair in, some known hair, identified to me as being known hair.

MR. ACREE: Would you mark these State's Exhibits 1, 2, and 3. (The exhibits were so marked by the court reporter.

Q Now, I offer you what's been marked for identification as State's Exhibit 1 and ask you if you recognize that?

A Yes, sir, this is a container along with the receipt tag that I received from Agent McMichen on the 2nd day of October of last year.

Q That's the container. It doesn't have anything in it?

A It doesn't have anything in it now.

Q It had something in it at that time?

A The hairs that were in it are mounted on one of the slides which are in one of the other exhibits you have there.

Q I offer you now -- do you know that's the one that you received from Agent McMichen on that date?

A Yes, because I have my case number marked on there in my handwriting.

Q That's in Case Number?

A 79-C76, Item Number 10.

Q Did you place that number on State's Exhibit 1?

A Yes, sir.

Q When you received it?

A Yes, sir.

Q From Agent McMichen?

A Yes, sir.

Q I offer you what's been marked as State's Exhibit 2 and ask you do you recognize that?

A Yes, sir, this is a paper towel containing a microscopic slide I mounted myself, glass slides which were labeled and contained hairs which are mounted under a cover slip in a mounting medium.

Q Where did you receive this hair?

A The hairs were obtained myself from some bedding which I received from Sheriff Dan Branch.

Q On what date?

A On August the 13th last year.

Q How do you know those are the hairs you received, the bedding that you got from Sheriff Branch?

A Because they are on the slide I mounted and labeled myself.

Q Those two slides are contained in the paper towel marked State's Exhibit 2; is that right?

A Right. The slides. The slides that are contained in this paper towel are two containing the hairs I just spoke about, which are from the bedding and also one containing the hairs which were identified as being known pubic hair from John Jerome White. Three slides in this package.

Q I think it would be better to mark these individually.

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If you would, pull out the one that's known and the one that's -- that's the known?

A That's the known hair, what was known to me as being the known hair.

MR. ACREE: Will you mark that? (The exhibit was marked State's Exhibit 2a.)

A The other two which were in this exhibit package are both from the bedding.

MR. ACREE: B and c. (The exhibits were marked State's Exhibits 2b and 2c by the reporter.)

Q Now, let's be very clear about these, please. State's Exhibit 2 is the paper towel which you withdrew three slides; is that correct?

A That's correct.

Q They have now been marked State's Exhibits 2a, that's this one in the center, 2b, and 2c?

A That's correct.

Q Now, what you received -- what you withdrew from the bedding is which of these slides?

A State's Exhibits 2 and 2c.

Q 2c. That's what you took off the bedding that you received from Sheriff Dan Branch?

A That's right.

Q State's Exhibit 2a is what?

A Hairs identified to me as being the known pubic hair from John Jerome White.

Q That was taken out of State's Exhibit 1?

A That's correct.

Q What you are referring to is not the slides but the hair?

A The hair that's on the slides.

Q Now, what's in State's Exhibit Number 3?

A State's Exhibit 3 contains more slides containing more hair that I removed myself from the bedding and also some hair that I removed from sheets which was another item that I also received from Sheriff Branch the same day.

Q And all of those were contained in?

A In Exhibit Number 3.

Q In the paper towel, these four slides were contained in this paper towel; is that correct?

A That's correct.

Q Now, when you received this State's Exhibit Number 1 and the hair that you got off the sheet and the bedding, the bedclothing that you got, what did you do with them at that point?

A At that point they were stored under lock and key until I could work the case.

Q How did you do that?

A Pardon?

Q What did you do to store it to make sure that's the same hair?

A They were put in a room and locked up.

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Q Did you place the case number on these slides?

A They are labeled so they can be matched back up to the case report to know which is the right case with the right evidence.

Q Okay. You say -- I want to be real clear -- State's Exhibit 1 is what you received from Agent Charles McMichen which contained the hair on the slide marked Exhibit 2a; is that right?

A That's correct.

Q You also received some bedding, bedclothing from Sheriff Branch?

A That's correct.

Q Which you put those hairs on State's Exhibit 2c, 2b, and State's Exhibit 3; is that right?

A Right, that's right. Only the slides from State's Exhibit 3 are from another item. It's the same collection of evidence but a different item.

Q Did you perform a test on one of these -- comparison tests on Exhibits 2a, 2b, and 2c?

A Yes, sir.

Q And what was this test that you performed?

A Again a comparison test, using the comparison microscope that I spoke of earlier. It's just a matter of placing one of the questioned hair slides on one side of the comparison microscope and placing the known hair slide on the other side of the comparison microscope and in viewing the hairs throughout their length and making a note of the different characteristics

of the hair.

Q What is the use of the power microscope?

A The power I used is a hundred, the objective.

Q After you compared State's Exhibit 2a to b and 2c, what were the results of your comparison?

A I concluded that there was sufficient similarities between the hairs on the slides, 2c -- which --

Q Where did you get that from?

A One of the slides that contained hairs that I removed from the bedding, that I received from Sheriff Branch, I conclude there was sufficient similarity between those hairs and the hair in the slide, which are slides which were identified to me as being known pubic hair from John Jerome White, to conclude that they could have had the same origin.

Q Explain to me and explain to the jury what your opinion is and what you base that on and why you say that's your opinion as opposed to something else.

A Basically what I'm -- by saying I conclude there is sufficient similarity to say they could have had a -- to have had the same origin as this, concerning hair examination, the only thing that we can do that is backed up by reference data is hair comparison, is under a microscope and what I mean by similarity is this. We examine the hairs from root tip to end tip, examine the different and various -- probably 15 or 20 -- about 20, I would say, closely different characteristics of hair that can only be seen under the microscope and you can

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view these different characteristics and make comparisons with other hairs, noting the similarities between the different characteristics, and in the particular case, there was sufficient likeness between the individual characteristics that I viewed under the microscope to say and to conclude that as a collection of characteristics that the hairs were similar enough to say they have the same origin. The state of our art at the present time is this, this is the best we can do with the hair comparison.

Q Plus all these comparison characteristics, must they be identical in order for you to state your opinion that they are similar?

A Each individual characteristic -- I'm saying is similar, is each individual one, is the same but as a collection, I say the hair is similar.

Q Tell me again what you say the results of the comparison test was?

A That the hair which is on slide Number -- Exhibit Number 2c, which is hair that I took from bedding that I received from Sheriff Branch, shows sufficient similarity which compared to the hair on Exhibit 2a which is hair which was identified to me as being known pubic hair taken from John Jerome White, shows sufficient similarity to say or conclude that the hairs on the two slides were of the same origin.

Q Okay. Now, State's Exhibit Number 2c, the one that you took off the bedding, did you compare it to any other hair?

A Yes, sir.

Q Who else was there?

A I believe myself and Agent Heard, it was one or two of the Manchester policemen, I believe Mr. Jackie Neely was there. I advised him I was going to have to take these for evidence, and like I say, it was one or two of the policemen, I don't remember offhand what their name was.

MR. ACREE: Your witness.

CROSS-EXAMINATION

BY MR. BISHOP:

Q Sheriff, when was the first time you went to Mrs. Neely's home after this incident occurred?

A Pardon?

Q When was the first time you went to Mrs. Neely's home at Number 5 Lakeview?

A That morning it happened.

Q When that morning?

A When did I get there?

Q Yes, sir. Did the Manchester police get there before you did?

A Yes, sir, they got there and called me and I was there, the best I can remember, around six-thirty or, say, seven o'clock, probably about seven o'clock.

Q And when did Agent Heard arrive?

A I don't know. We called him in LaGrange and he came on over there. I don't know exactly what time he got there.

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A Yes, I was also asked to compare it to a series of cases involving Columbus, Georgia cases.

Q How many other cases?

A I believe it was seven of them.

Q And in that examination, comparing that --

MR. BISHOP: I object to that, Your Honor, that doesn't have anything to do with this case.

THE COURT: Overrule the objection. Go ahead.

Q (Mr. Acree contd.) Comparing State's Exhibit 2c as the one that came off the bedding --? Is that right?

A That's right.

Q 2c to those seven other cases, did it match up on any of those?

A No, sir, I was not able to match any of the questioned hair from any of those cases.

Q Those seven you couldn't compare; between 2 and 2a, you could match it up to say that they were similar?

A Similar enough to conclude they could have had the same origin.

MR. ACREE: Your witness.

THE COURT: Mr. Bishop, your witness for cross-examination.

CROSS-EXAMINATION

BY MR. BISHOP:

Q Mr. Blankenship, I noticed that every time you state your conclusion, you always said "could have had the same origin is that correct?

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A That's correct.

Q That does not mean it had the same origin?

A That is correct.

Q It means it's a possibility?

A It means it could have, possibility.

Q I did understand you correctly?

A That's right.

Q It doesn't mean beyond a reasonable doubt that they were?

A It means that I can't say that it did come from -- it did match up exactly, no.

Q You can't say it matched up?

A I can say it matched up in my definition.

Q In another way, you can't say it came from the same person?

A That's right.

Q You can't say that?

A My opinion is it could have.

Q It could have come from the same person but you could not venture an opinion it did come from the same person?

A I say it's likely. Again my opinion is it could have. My opinion is it's more likely it did than didn't. The opinion is still that it could have.

Q I didn't ask you all of that but --

A That's the only way I can answer it.

Q All I wanted to do is make sure I understood your

A That's correct.

Q That does not mean it had the same origin?

A That is correct.

Q It means it's a possibility?

A It means it could have, possibility.

Q I did understand you correctly?

A That's right.

Q It doesn't mean beyond a reasonable doubt that they were?

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Q In another way, you can't say it came from the same person?

A That's right.

Q You can't say that?

A My opinion is it could have.

Q It could have come from the same person but you could not venture an opinion it did come from the same person?

A I say it's likely. Again my opinion is it could have. My opinion is it's more likely it did than didn't. The opinion is still that it could have.

Q I didn't ask you all of that but --

A That's the only way I can answer it.

Q All I wanted to do is make sure I understood your

choice of words, your English, "Could" as opposed to the word "did" or "in fact".

A I had to explain it the best I could.

Q What that is, is a possibility?

A Stronger than a possibility, as I just said.

Q Either it is or is not now, --

A No, sir.

Q Pardon me?

A I have given my opinion of "could have". That's my opinion.

Q All right, that's all I'm asking you.

A That's what I've given you.

Q And "could have" means a possibility?

A As I said earlier, it's more likely than not and it could have, right on.

Q What do you understand the word "could" to mean, Mr. Blankenship?

A For the simple reason --

THE COURT: Let him explain, he's got a right to explain.

A Can I explain my answer?

THE COURT: Go ahead and explain it.

A Because all the individual characteristics are the same to me, it's more likely that it is the same than not; because of the state of the art, we can't say things are positively this or positively that, but our opinion and our

feeling on it is it's stronger than it is than not, if we say it could, and we still say it could have.

Q (Mr. Bishop contd.) Mr. Blankenship, --

A Uh-huh.

Q -- you say you went to what school, what school was that?

A Which one?

Q Walter McCrone Institute?

A Yes, he teaches a course in microscopy.

Q You also went to the FBI Academy?

A Several times.

Q None of them told you you could ever make a statement that this is more likely than that, did they?

A Yes, sir.

Q Come on, Mr. Blankenship. You are telling me they told you you could use a microscope and compare hair samples and say anything more than "could have"?

A Yes, sir.

Q Why didn't you say "could have" or -- I mean why do you say "could have"?

A That's the way we write our reports. We can't say positive, but we say it could have.

Q You can't say positively then?

A Right. I have admitted that.

Q That's all I'm asking you.

A I admitted that more than once.

Q Would "could" -- what does the word "could" mean?

A Possibly.

MR. BISHOP: No further questions.

THE COURT: Anything else, Mr. Acree?

MR. ACREE: Just a couple.

REDIRECT EXAMINATION

BY MR. ACREE:

Q You said you examined 15 to 20 different characteristics of these hairs?

A I believe about 18 or 20 is more accurate.

Q If the characteristics of those 18 or 20 were exactly the same, identical, would you at that time be able to say it was positive?

A No, sir.

Q You would still say "could have"?

A I would say what I said, it could have.

RECROSS-EXAMINATION

BY MR. BISHOP:

Q Mr. Blankenship, an individual of the same genealogy, that is the same ancestors, would those similarities be the same?

A The individual characteristics?

Q Yes, sir.

A No, sir.

Q What are the characteristics, Mr. Blankenship, tell us about it.

A The ductile structure, medulla structure, length,

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width, thickness, root structure, type structure, pigment granulation, thickness of these, the size of the pigment, ovoid bodies.

Q Go ahead.

A That's most of them.

Q Have you finished?

A I'm finished.

Q Now, those characteristics are grouped, are they not, according to racial heritage?

A Individual characteristics are not. They are not grouped as such in such races, they will --

MR. ACREE: He should be able to answer the question, Your Honor.

MR. BISHOP: May I finish asking the question, Your Honor?

THE COURT: Ask the question and I'll let him answer it and explain it. Ask the question.

Q (Mr. Bishop contd.) If I can finish asking my question before he starts making a speech, I would appreciate it.

A I'm sorry.

Q Thank you. Mr. Blankenship, among the races of mankind, are there various characteristics that are common to the various races? Did you learn that in your studies?

A Is that a question?

Q Yes, sir.

A Yes, sir.

Q What are those characteristics?

A The shape of the hair is different in different races.
That's one.

Q That's one. You want to tell me about some more?

A The one race in particular, Negroid, tends to coil
more so than -- it coils like a spring, more so than the other
two major races.

Q Isn't there a difference in the shape of it also?

A I believe I said that a minute ago.

Q What is the difference?

A The shape of the Mongoloid race is almost completely
round or circular shape. The Caucasian race is a little less
round, a little more oval. The shape of the Negroid race is
a little less oval, more of a flat kind of shape.

Q That's three of them.

A That's the major three.

Q What about Ostroloid?

A Never heard of it.

Q All right. Mr. Blankenship, to go back to your
final definition of "could", you said possibly.

A That's the first word that comes to my mind, yes.

MR. BISHOP: No further questions.

THE COURT: Come down. May this witness be excused.
Do you have any objections?

MR. BISHOP: I have none.

THE COURT: You can go back to Columbus and go back

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to work. Thank you. It is your quitting time, isn't it?

WITNESS: A little past.

THE COURT: Call your next witness, Mr. Acree.

MR. ACREE: Sheriff Dan Branch.

SHERIFF DAN BRANCH, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ACREE:

Q Mr. Branch, have you been sworn?

A Yes, sir.

Q Please state for the record your full name.

A Dan Branch.

Q In what capacity are you employed?

A Sheriff of Meriwether County.

Q In that capacity, did you have the occasion to investigate an incident occurring at Number 5 Lakeview Apartments, Manchester, Georgia, on August 11, 1979?

A Yes, sir, I did.

Q Did that investigation take place in Meriwether County, Georgia?

A Yes, sir, it did.

Q In that connection, did you obtain from the residence of Mrs. Myrtle Neely some items?

A Yes, sir, I did.

Q What kind of items did you obtain?

A I got sheet, bedspread, pillowcase, and her clothes,