

ORIGINAL

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION ONE

D 002073

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff/
Respondent,

vs.

FREDERICK RENE DAYE,

Defendant/
Appellant.

From San Diego County

Hon. Douglas R. Woodworth, Judge

Jury Trial

Court of Appeal No. 4Crim D002073

FILE
Keenan G. Co.
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COURT OF APPEAL FOURTH DISTRICT

REPORTER'S TRANSCRIPT OF PROCEEDINGS ON APPEAL

(May 24, 1984)

VOLUME II

APPEARANCES:

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In Propria Persona

STEVEN D. USSERY, CSR 3157
Official Reporter
San Diego Superior Court

1 I have no objection to excusing him as to --

2 THE COURT: Well, you are not excused.

3 That is all for now, Officer. The attorneys will
4 keep you posted as to when you might come back, if at all.

5 (Discussion off the record was had at this time.)

6 MR. WILLIAMS: Call Annette Peer to the stand, please.

7 THE COURT: Step forward and be sworn, please.

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

12 THE WITNESS: I do.

13 THE CLERK: Please be seated at the witness stand.

14 Please state your full name, and spell your last
15 name for the record.

16 THE WITNESS: Annette Lynn Peer, P-e-e-r.

17 THE COURT: First name is Annette?

18 THE WITNESS: Annette.

19 THE COURT: Thank you.

20
21 ANNETTE LYNN PEER,
22 a witness herein, called by the People, having been first
23 duly sworn, testified as follows:

24
25 DIRECT EXAMINATION

26 BY MR. WILLIAMS:

27 Q Alright. Miss Peer, what is your occupation?

28 A I am a criminalist for the City of San Diego Police

1 Department Crime Laboratory.

2 Q Please state for the members of this jury what your
3 training and experience is in reference to your current occu-
4 pation.

5 A I've completed my general education requirements
6 from Southwestern Junior College in Chula Vista.

7 I have a bachelor's degree in criminalistics from
8 the University of California at Long Beach State.

9 I have completed internship at an El Cajon police
10 department crime laboratory.

11 I have internship experience from the San Diego
12 Police Department Crime Laboratory.

13 I have worked as a laboratory technician and a
14 chemist for the City of San Diego Water Utilities Industrial
15 Waste Program.

16 Approximately a year and a half ago I was hired
17 by the San Diego Police Department Crime Laboratory as an
18 assistant criminalist. I've received in-house training in
19 serology, crime-scene processing, and fibre analysis.

20 Q With respect to your training and experience in
21 serology, can you give us some detail about what you've done
22 there.

23 A Training in serology is conducted by my immediate
24 supervisor. He gives us lectures and reading materials to
25 complete up-to-date reading material. We have to take
26 examinations, both written and practical, where we actually
27 work with physiological fluids, such as blood and saliva.

28 We do practice unknowns, and after we pass all our

1 training, then we are able to start casework under direct
2 supervision.

3 THE COURT: Would you spell "serology" for the jury,
4 please.

5 THE WITNESS: Serology, s-e-r-o-l-o-g-y.

6 THE COURT: Thank you.

7

8 BY MR. WILLIAMS:

9 Q With respect to your current occupation, have you
10 ever qualified as an expert in that field in the courts of
11 this county?

12 A Yes, I have.

13 Q And you've testified on prior occasions in that regard?

14 A Yes, I have.

15 Q Okay. Were you called upon to do some blood compari-
16 sons, blood grouping comparisons in the case of -- against
17 Mr. Frederick Daye and Mr. David Pringle?

18 A Yes, I was.

19 Q And I see on the board a diagram with those two names
20 on it. Is that diagram prepared for that purpose?

21 A Yes, it was.

22 Q Not really a diagram, a chart of some sort; is that
23 correct?

24 A Yes.

25 THE COURT: People's next in order for identification?

26 MR. WILLIAMS: Please, your Honor.

27 THE CLERK: People's 11.

28 THE COURT: Very well.

1 BY MR. WILLIAMS:

2 Q Tell the jury, if you would, if it's possible to
3 obtain blood groupings from body fluids other than blood?

4 A It is possible to find a person's A-B-O blood type
5 and other types in some of their bodily fluid, such as saliva,
6 semen, and vaginal secretions.

7 Q How long has that been a scientific fact?

8 A For many years.

9 Q So, that blood grouping ability has been taking
10 place in the scientific community for many years?

11 A Oh, yes, it has.

12 Q What does "A-B-O" mean?

13 A A-B-O is one system in a way of typing blood, and
14 the different types of A, B, O, and A-B, and it's just
15 represented by A-B-O.

16 Q I see. So, a person can have an A-type blood?

17 A That's correct.

18 Q Or a B-type blood?

19 A Right.

20 Q Or an O-type blood?

21 A And an A-B type.

22 Q So, there is four types?

23 A That's correct.

24 Q Okay. What on Exhibit 11 does "pgm" mean?

25 A "Pgm" stands for phosphoglucomutase, and "pgm"
26 is short for that, and it is another type of -- another
27 system in typing blood.

28 Q And that last column there appears to be "pep A."

1 What does that mean?

2 A That is also another system of typing blood.

3 Q Now, did you receive samples of blood from the body
4 of Desiree Coleman?

5 A Yes, I did.

6 Q And did you receive any other samplings from her
7 body fluids of any kind?

8 A I received a saliva sample from Coleman.

9 Q Any vaginal swabs?

10 A Yes, I did.

11 Q Alright. Would you explain to the members of the
12 jury what you mean by a vaginal swab.

13 A A vaginal swab, if a rape has possibly occurred,
14 the female's transported to a hospital and a doctor will take
15 a cotton swab and will actually swab the inside of her
16 vaginal vault. That is a vaginal swab.

17 He does a deep vaginal swab, which is deep in the
18 vaginal vault, and a shallow vaginal swab.

19 Q Any other body fluids taken during this process that
20 you've just talked about?

21 A No. No bodily fluids.

22 Q Okay. Were you able to type Mrs. Coleman's blood?

23 A Yes, I was.

24 Q What was the result?

25 A The results were, she was an A-B-O blood type O.
26 She was a pgm type II-I, and she was a pep A type I.

27 Q What's the most common A-B-O blood group?

28 A The most common would be blood type O.

1 Q And how about pgm?

2 A Pgm, the most common would be type I.

3 Q And how about pep A?

4 A The most common type is I.

5 Q What is -- how many different breakdowns are there
6 in the pgm?

7 A There are three different breakdowns. There is pgm
8 type I, type II-I, and type II. Type II-I is a mixture of
9 I and II.

10 Q Okay. I see the next down is labelled "Coleman's
11 saliva."

12 A That's correct.

13 Q What is the O minus to the right of "Coleman's saliva"?

14 A That means she is also a blood type O, but it was
15 picked up on her secretions, namely, the testing procedure
16 used was on her saliva sample.

17 Q So, from her saliva sample she gave, you were able
18 to determine that her blood type was O?

19 A That's correct.

20 Q Which is consistent with the finding that you found
21 from her actual body fluid, her blood?

22 A That's correct.

23 Q Did you examine a vial of blood taken from the person
24 of Mr. Daye?

25 A Yes, I did.

26 Q What were the results?

27 A His A-B-O blood type is O. His pgm type is II-I,
28 and his pep A type is I.

1 Q Appears to be the same type of blood type as Mrs.
2 Coleman?

3 A That's correct.

4 Q What is the word "secretions" written up there for?

5 A "Secretions," since we don't test the blood on the
6 saliva, we are testing for the A-B-O substance in the blood,
7 and that is called secretions. I mean in the physiological
8 fluid.

9 Q In the nonblood fluid?

10 A Correct.

11 Q So, if a person -- or is everyone a secreter?

12 A No, they are not.

13 Q Some are, and some aren't, then?

14 A That's right.

15 Q I take it, then, Mrs. Coleman is a secreter?

16 A That's correct.

17 Q If a person is not a secreter, are you capable of
18 typing their blood from nonblood body fluids?

19 A You are not able to.

20 Q Okay. So, as apparently Mr. Daye is a secreter, is
21 that true?

22 A That's correct.

23 Q Alright. Moving on down there on Exhibit Number 11
24 we move to Pringle's blood.

25 Did you receive a vial of Mr. Pringle's blood and
26 examine it?

27 A Yes, I did.

28 Q And what were your findings?

1 A Pringle's blood is A-B-O type B, pgm II-I, and pep A
2 I.

3 Q Apparently you received a saliva sample from Mr.
4 Pringle?

5 A That's correct.

6 Q Was it determined whether or not he was a secreter?

7 A Yes, it was. He is a secreter.

8 Q He is?

9 And the finding from his saliva appears consistent
10 with what the blood type is?

11 A That's correct.

12 Q What -- the conclusion that someone is or is not a
13 secreter is arrived at how?

14 A Two methods: One way is, we test the blood; and
15 another method is, we test one of their physiological fluids,
16 usually their saliva.

17 Q When you say you test it, do you add something to it
18 and something happens, or --

19 A Yes. It's involved chemically.

20 Q Okay. Is this a recognized method by which you make
21 such findings?

22 A Yes, it is.

23 Q Were Mrs. Coleman's trousers worn on the -- were you
24 advised a little bit about Mrs. Coleman's ordeal?

25 A Yes, I was.

26 Q Of January 10, 1984?

27 A Yes, I was.

28 Q Some of the facts about it?

1 A Yes, I was.

2 Q Were you given the pants, the trousers, jeans that
3 she was wearing on the night she was attacked?

4 A Yes, I was.

5 Q Alright. Did you make any findings with reference
6 to the jeans?

7 A Yes, I did.

8 Q Please explain to the jury what it was you found.

9 A I found semen on three different areas of the jeans.
10 I found semen in the crotch area of the jeans. I found semen
11 on the left leg of the jeans, and on the right leg of the
12 jeans on the outside, around the knee area.

13 Q Alright. Let's begin first with the crotch area of
14 the jeans.

15 You've got written to the right of that "B-O," and
16 then "H" in parentheses, and the word "secretions" under-
17 neath. Please explain that.

18 A Testing procedure that I used, I picked up the
19 presence of B-substance. When we run our tests we also
20 pick up the presence of oil also, which is part of the
21 testing that we do. "H" is just another way of expressing
22 "O," so not to confuse you. "Secretions" is just to show
23 that it is not actual blood that we are picking up. It is
24 just the substance in one of the physiological fluids.

25 Both B and O were listed because in the crotch
26 of the jeans it is likely that it is a mixture of semen
27 and vaginal secretions.

28 Q So, you picked up in the crotch of her jeans her

1 vaginal secretions, which are type O?

2 A There is no way of telling whether that is her type
3 O. It was just type O that was picked up.

4 Q Okay. So, it could be some -- she is an O, though?

5 A That's correct.

6 Q And Mr. Daye is an O?

7 A That's right.

8 Q The left leg of the jeans, tell us what your findings
9 were there.

10 A I found the presence of O secretions on the left leg.

11 Q And the right leg of the jeans?

12 A I found the presence of O secretions on the right leg
13 also.

14 Q Now, with reference to the stain in the crotch area,
15 you said that there may likely be a mixture of vaginal
16 secretions plus semen stain?

17 A That's correct.

18 Q What about the substances you found that you've
19 identified coming from the left leg of the jeans and from
20 the right leg of the jeans, would they be a mixture?

21 A It is likely that it is not a mixture of semen and
22 vaginal secretions. It is likely it's just semen.

23 Q Are the stains on the left leg of the jeans and
24 on the right leg of the jeans consistent with Mr. Pringle's
25 blood type, or are they consistent with Mr. Daye's blood
26 type?

27 A They would be consistent with Mr. Daye's blood type.

28 Q If Mr. Pringle's semen were found on the jeans in

1 the leg areas, would it appear as an O or something else?

2 A It should appear as a blood type B.

3 Q Is that why you say that those leg stains are
4 consistent with Mr. Daye's --

5 A That's correct.

6 Q -- blood type?

7 A Right.

8 Q Alright. The bottom category there is carpet stain.
9 The carpet stain itself, do you know where that came from?

10 A I know it came from an automobile that was processed
11 in connection with this case.

12 Q And do you know where in the car it came from?

13 A I believe it was mentioned that it was found between
14 the two front seats.

15 Q And to the right of that you've got "B and secretions."

16 A That's correct.

17 Q Alright. Tell us about that, please.

18 A When I ran my tests on the carpet stain, it was
19 positive for the presence of semen.

20 I ran my A-B-O blood tests on it, and it was positive
21 for B secretions. It had a pgm of II-I, and the pep A
22 results were inconclusive.

23 Q Again, the B apparently is consistent with that of
24 the blood of Mr. Pringle?

25 A That's correct.

26 Q The stains on the legs of the jeans, do they appear
27 to be wiped on or otherwise applied, if you know?

28 A The shape of the stains looked as if they were

1 dropped on.

2 Q As opposed to what?

3 A As opposed to a smear or a drain, a drainage stain.

4 Q I take it you are familiar with the process of
5 male ejaculation?

6 A Yes, I am.

7 Q Alright. Assume for the moment that the semen stains
8 on the left and right leg of Mrs. Coleman's pants were caused
9 during an ejaculation. Would that be consistent with your
10 opinion about the drops?

11 A Yes.

12 Q Now, you can't tell this jury that, based upon your
13 findings, that beyond all possible doubt those findings
14 cause you to conclude that Mr. Daye and Mr. Pringle are respon-
15 sible for this; is that correct?

16 A I cannot conclude that, no.

17 Q Okay. What is it you can conclude?

18 A I can say that the types found on the right and left
19 leg of the jeans are consistent with Mr. Daye, and I can say
20 that the types found on the crotch area of the jeans and the
21 carpet stain are consistent with Mr. Pringle.

22 Q So, they're within a group of society that has that
23 type of blood?

24 A That's correct.

25 Q That's a big group?

26 A Yes, it is.

27 Q But you can't rule those two individuals out of being
28 in this car that night?

1 A No, I cannot.

2 MR. WILLIAMS: Your Honor, there is some physical evidence,
3 probably quite a few pieces that should be marked. I am
4 wondering if we could maybe take a few minutes early to the
5 lunch hour and get that done now, and when we pick up I'd
6 be ready. Would that be convenient with the Court?

7 THE COURT: Certainly.

8 Would counsel approach the bench just briefly about
9 scheduling.

10 (Discussion off the record was had at the bench.)

11 (The following proceedings were had in open court,
12 in the presence of the jury.)

13 THE COURT: Alright. Ladies and gentlemen, trying to
14 get a reasonable prediction for you of how things are going.

15 We are about to adjourn until 1:30 this afternoon.
16 I think the case is on schedule, and will pretty clearly
17 be completed and submitted to you sometime, oh, probably
18 not later than Wednesday of next week.

19 I remind you of your continuing responsibilities,
20 and we are now in recess until 1:30 this afternoon.

21 (Luncheon recess.)

22 (The following proceedings were had in chambers.)

23 THE COURT: Just briefly, Mr. Munkelt's motion to
24 strike the witness's -- the witness Clark's testimony, that
25 the description as given by Wells seemed to be consistent with
26 or compatible with the description as given by the victim.
27 Was that essentially the --

28 MR. MUNKELT: Yes, your Honor. I believe that, in

1 response to a question, actually part of a line of questioning,
2 that I think properly called for a "yes" or "no" answer, the
3 officer responded in the affirmative, and then gave additional
4 information which I believe was hearsay, and would move to
5 strike that.

6 THE COURT: It seemed blurred enough to me to be harm-
7 less at the time, and the motion to strike is denied.

8 (Luncheon recess.)

9 --oOo--

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1 SAN DIEGO, CALIFORNIA, THURSDAY, MAY 24, 1984, AT 1:30 P.M.

2 --oOo--

3 (The following proceedings were had in open court,
4 in the presence of the jury.)

5 THE COURT: Good afternoon, ladies and gentlemen.

6 Further examination of Ms. Peer.

7 MR. WILLIAMS: Thank you, your Honor.

8 Go ahead.

9
10 ANNETTE LYNN PEER,

11 a witness herein, called by the People, having been previously
12 duly sworn, resumed the witness stand and testified further
13 as follows:

14
15 FURTHER DIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q Alright. Miss Peer, I think we'd finished with the
18 results of your analysis of all of the items of evidence.

19 (Pause.)

20 Did you note any blood consistent with that of Mr.
21 Pringle anywhere other than as you have shown it on your
22 chart Exhibit Number 11?

23 A There were no other stains.

24 MR. WILLIAMS: For the record, your Honor, Exhibit
25 Number 16 that the witness will shortly be examining is
26 described as an evidence envelope. I am sorry, it's out
27 of order.

28 THE COURT: That's alright.

1 MR. WILLIAMS: Alright. Exhibit Number 12 is an
2 evidence envelope with a name "Frederick Daye" on it.

3 Exhibit Number 13 a similar envelope with the name
4 "Frederick Daye" on it.

5 Exhibit Number 14 an envelope with the name
6 "Desiree Coleman."

7 And Number 15 an evidence envelope, again identified
8 with the name "Desiree Coleman."

9 And Number 16 an evidence envelope containing
10 numerous smaller envelopes.

11 Exhibit Number 17 a pair of blue jeans.

12 THE COURT: Very well.

13

14 BY MR. WILLIAMS:

15 Q Starting with Exhibit 12, Miss Peer, would you tell
16 the members of the jury what the exhibit is and what is
17 contained within that exhibit.

18 A This is a processing packet for a Frederick Daye.
19 Contained inside of it when I receive it, and the evidence
20 is sealed, is usually two vials of blood and one urine sample.

21 Q And is that what is contained within that exhibit?

22 A Contained at this moment are two vials of blood.

23 Q Okay, Exhibit 13, please describe that and tell
24 us what is contained in there.

25 A This is also a processing envelope for Frederick
26 Daye, and the contents of a suspect's processing packet,
27 usually contains hair samples from the head, body, and pubic
28 areas. They sometimes contain penile swabs from the urethra

X

X

1 and glans and shaft and fingernail scrapings.

2 Q And that particular envelope contains what?

3 A This particular envelope contained hair samples
4 from the body, head, and pubic hair. It also contained
5 hair-combing sample and a saliva sample.

6 MR. WILLIAMS: Okay.

7 THE COURT: Purportedly of Mr. Daye, did you say?

8 THE WITNESS: Yes.

9 THE COURT: Alright.

10

11 BY MR. WILLIAMS:

12 Q Okay. Exhibit Number 14, please identify that for
13 us.

14 A This is a processing packet for a Desiree Coleman.

15 Q And what is contained within that processing
16 packet?

17 A This processing packet contains hair-combings, a
18 head-hair sample, a pubic-hair sample, two slides made from
19 the vaginal swabs, one deep and one shallow, and hairs that
20 I recovered off of items of her clothing.

21 Q Alright. Now, you are looking at some smaller
22 envelopes. Are those smaller envelopes -- do they bear
23 writing which individually identify their contents?

24 A Yes, they do.

25 Q And that's all within Exhibit 14, correct?

26 A Correct.

27 Q Okay. Alright. Why don't you put the contents
28 of 14 back in there, and tell us about Exhibit 15.

1 A This is an envelope for a case with our laboratory
2 -- with my laboratory number E-45. It's what we call the
3 freezer packet.

4 When we find stains or something that may be
5 grouped in the future, such as blood, semen, or saliva, it
6 is removed from the item of clothing and/or the object, and
7 it is frozen away in our freezer so that it could be
8 reanalyzed at any time.

9 Q And that was in -- maintained in your freezer until
10 when?

11 A Until as of about an hour ago.

12 Q Okay, and Exhibit 16, please identify that and the
13 contents.

14 A It's an envelope which contains smaller envelopes.
15 One is a saliva sample from Desiree Coleman, and there are
16 several other small envelopes that contain stains which I
17 removed myself from clothing, and a semen stain off of a
18 carpet sample.

19 Q From the Mercury Cougar?

20 A Well, it doesn't actually say that on here. I just
21 identify it as a semen stain.

22 Q Okay. Very good.

23 I take it the smaller envelopes within Exhibit 16
24 each bear writing identifying their contents respectively?

25 A Yes, they do.

26 Q Okay. Showing you Exhibit Number 17, described
27 as a pair of blue jeans, do you recognize these blue jeans?

28 (Pause.)

1 A Yes, I do.

2 Q How is that?

3 A I have my initials on the inside pocket and my
4 laboratory number.

5 Q Are there any holes in those jeans that you caused?

6 A Yes, there are.

7 Q And would you identify those for the jury, please.

8 A There is a hole located in the crotch area of the
9 jeans. I removed that. That was a semen-positive stain.

10 There is also a hole off to the side here, that
11 I also removed. That's what we call a control area. That
12 is to make sure that, when we test the material here, that
13 there is no interference from the material. So, we also
14 run a control.

15 There is also holes found on the right and left
16 legs, that I removed. These were also -- this area here was
17 a semen stain, and this was the control area for that semen
18 stain.

19 This is the left -- what I call the left leg.

20 This is the right leg. This was the area that
21 was semen-positive here, and this was the control area that
22 I took.

23 Q The control area, what -- can you expand on that
24 a little bit.

25 A Control area is always -- when it's available, is
26 always run to make sure there is no interference that we get
27 in our testing from the material itself. Sometimes the
28 material might be contaminated with something that would give

1 us a strange reaction; therefore, we always run a control to
2 make sure the material is not causing any problems.

3 Q I take it that would be done, then, to improve
4 upon the accuracy of your findings?

5 A That's correct.

6 Q Now, these little envelopes contained within
7 Exhibit Number 16, labelled "blue jeans" and "control
8 cutting" and so forth, are they the patches that appear
9 to be missing in the holes reflected by Exhibit 17?

10 A Yes, that's correct.

11 Q Okay. Was any of this physical evidence released
12 to any other laboratories during your police department's
13 possession of it?

14 A Yes, it was.

15 Q Okay, and whose -- who took that evidence?
16 Another party?

17 A Yes.

18 Q Okay. Was that requested by Mr. Daye's counsel?

19 A I don't know that myself. I did not release it
20 personally.

21 MR. WILLIAMS: Alright, Miss Peer, thank you.

22 I think that's all I have.

23 THE COURT: Cross-examination.

24 MR. MUNKELT: Thank you, your Honor.

25
26 CROSS-EXAMINATION

27 BY MR. MUNKELT:

28 Q Miss Peer, if I may, I'm going to start out with

1 Exhibit 17 for identification, the blue jeans here, and ~~the blue~~
2 just to get a better idea of exactly the locations you were
3 talking about.

4 I am going to hold those up so hopefully most
5 people in court can look at them from the front.

6 THE COURT: Could you hold them higher, perhaps.

7 MR. MUNKELT: I will try. Then maybe I can't see
8 them. Let's see.

9

10 BY MR. MUNKELT:

11 Q Okay. Now, as I am holding them up here with the
12 zipper showing towards the front, at this time we can't see
13 the cuttings you made from the crotch; is that correct?

14 A That's correct.

15 Q On what would be the wearer's right leg of the pants
16 there is basically a circular hole just about half-way down
17 the leg, correct?

18 A Correct.

19 Q And that has the word "control" written on it?

20 A That's correct.

21 Q Now, by making that indication "control," does
22 that mean that prior to making the cutting you examined the
23 pants and determined, in your opinion, that there was not
24 any foreign substance on the jean there?

25 A Yes, that's correct.

26 Q Okay. Now, about, say, four inches below that
27 roundish hole there is a long, thin cut, correct?

28 A That's correct.

1 Q And is that a cutting you took because you felt
2 there was a foreign substance of some sort on that location?

3 A I found semen there.

4 Q Okay. When you say you found semen, did you do
5 some kind of test on that area of the jean before you made
6 the cutting?

7 A Yes, I did.

8 Q Okay, and what test was that?

9 A I do a screening test for semen, which is a chemical-
10 color test.

11 Q Okay, and the color test would indicate whether or
12 not there was a chemical called acid phosphatase, basically;
13 is that right?

14 A That's correct.

15 Q And that's a chemical which is present in fairly
16 high concentrations in human semen?

17 A That's correct.

18 Q But not generally present in other parts of the
19 human body or human fluid?

20 A No. It is found in other bodily fluids.

21 Q Could you give an example?

22 A It is also found in vaginal secretions.

23 Q Okay. Now, then, after you made that finding there,
24 or got the positive color test, I guess, you made that cutting;
25 is that right?

26 A That's correct.

27 Q Again, on the same leg, and going straight down,
28 again there is a somewhat smaller hole cut. Is that another

1 area where you got a positive reaction?

2 A That's correct.

3 Q Then just below that hole there is a circle area
4 on the jean. Do you recall what that would be?

5 A That also gave me a positive color test, but it
6 isn't in the same area as the other stains, and the two areas
7 that I did remove by cutting them out were sufficient for my
8 grouping studies.

9 Q So, from the two cuttings that you took, you felt
10 you had an adequate amount of substance to test accurately,
11 correct?

12 A That's correct.

13 Q And now that I look at it closely, there is a couple
14 of other small circled areas here. Would all the circled
15 areas that are not labelled "control" all be areas where
16 you got a positive reaction to your color test?

17 A Yes, that's correct.

18 Q Okay. On the left leg of the jean, as from the
19 wearer's point of view, all of -- there are, let's see,
20 one, two, three, four holes of varying sizes below the knee
21 area. Was any of those control?

22 A Yes, they were.

23 Q Do you recall --

24 A The large circular hole was the control area.

25 Q The largest of those four?

26 A That's correct.

27 Q And if I turn the jeans around so we are looking
28 more at the back pocket area, try and spread them out a little

1 bit. There is a fairly large hole right on the crotch seam,
2 correct?

3 A Correct.

4 Q And is that also an area where you get a positive
5 test on your color tests?

6 A That's correct.

7 Q And then just to the -- let's see, on the wearer's
8 right leg and about, oh, four inches down there is another
9 roundish hole.

10 A That's the control area.

11 Q Okay. So, although that one doesn't have the word
12 "control" around it, that's what that one was?

13 A It might be written on the inside.

14 Q Now, did you also have some vaginal swabs that had
15 been provided to you as part of the samples from Mrs. Coleman?

16 A That's correct.

17 Q And did you perform some kind of test on those to
18 see whether you got a positive color reaction?

19 A Yes, I did.

20 Q And did you get a reaction?

21 A Yes, I did.

22 Q Did you do any further testing on those swabs to
23 try and determine whether there was an identifiable blood
24 group or typing that you could do?

25 A No, I did not.

26 Q And what's the reason for that?

27 A The chemical color tests that I got were weak positives.

28 Q And what did that indicate to you?

1 A It indicated that there may be low amounts of semen
2 present.

3 Q Now, your color test would also have given you some
4 sort of positive reaction to the vaginal fluid in those swabs,
5 wouldn't it?

6 A It might.

7 Q Now, I think you mentioned that serology, or the
8 study of human body fluids, is one of the areas where you've
9 been trained while you've been with the police department; is
10 that right?

11 A That's right.

12 Q And in the course of that training you've learned
13 that serology is actually just about the most difficult and
14 least precise kind of analysis that you can do in your police
15 lab, isn't it?

16 A It is a difficult area, and conclusions that we
17 draw sometimes are not completely conclusive.

18 Q In other words, they're -- well, strike that.

19 One of the things that makes this kind of test, or
20 this area difficult is the difficulty of ensuring good preser-
21 vation of the original samples; isn't that true?

22 In other words, there are chemical changes which
23 might affect the results that could happen between the depos-
24 iting of a body fluid and your ability to examine it in the
25 lab?

26 A I don't quite understand your question.

27 Q Okay. Isn't it true that, for example, a sample
28 of semen which is kept at room temperature for two or three

1 days and then turned in to a lab might be very difficult to
2 evaluate with any kind of certainty?

3 A I wouldn't think so.

4 Q There is a significant possibility of chemical
5 change or chemical deterioration in samples --

6 A There is some possibility.

7 Q -- samples of this type, isn't it?

8 A There is some possibility, yes.

9 Q Again, the techniques that you use to identify
10 particular types or groupings are not techniques which
11 necessarily demonstrate clearcut results or distinction, are
12 they?

13 A The way I perform my tests, I feel they are clear-
14 cut.

15 Q Okay. For example, referring to the chart that you
16 have up there behind you as, I think it's Exhibit 11, although
17 I am not really positive about that, indicates an analysis
18 of a carpet stain in the pep A category states "inconclusive";
19 is that right?

20 A That's right.

21 Q Now, what that term means -- and when you constructed
22 the chart, or when you did the procedures to get your results,
23 is that you performed that test and weren't able to read the
24 results, right?

25 A That's correct.

26 Q And that's a -- that's a problem which may exist in
27 any particular examination of human fluids or attempt to type
28 them?

1 A Yes.

2 Q And another complicating factor is the -- is the
3 existence in the human population of occasional rare types;
4 isn't that true?

5 A That's correct.

6 Q So, for example, in the pgm grouping, I think you
7 indicated that there were three standard categories that
8 would ordinarily be tested for; is that right?

9 A Three most common types, right.

10 Q But in fact, there are several much less frequently
11 occurring types in the population, aren't there?

12 A That's correct.

13 Q I think you indicated, with respect to the results
14 you obtained from the crotch area of the jeans, that you
15 received a positive response or some result showing both
16 B and O present there; is that right?

17 A That's correct.

18 Q And did you do any further testing to try and deter-
19 mine what the relative concentration of those might be?

20 A No, I did not.

21 Q Did you do any testing to try and determine whether
22 -- or what percentage of that sample deposited there might
23 have been semen or vaginal fluid?

24 A No, I did not.

25 Q Did you basically perform the same series of tests
26 on each of the cuttings from the jeans that you took?

27 A Yes, I did.

28 Q And did you perform the same series of tests on the

1 carpet stain as you had on the jeans?

2 A Yes, I did.

3 Q Now, referring for a moment to the control test
4 that you did on the jeans, one reason for doing those control
5 tests is that different materials or detergents used on those
6 materials could give a positive response to one of your blood-
7 grouping tests, couldn't they?

8 A Yes, they could.

9 Q And that would be another example of one of these
10 difficulties in preserving or interpreting a particular
11 sample in some cases, wouldn't it?

12 A Yes.

13 Q Now, blood typing as a means of identification is
14 a much more certain method when one is excluding an individual
15 than when one is including an individual; is that correct?

16 A That's correct.

17 Q In other words, since that's a sort of a difficult
18 question to get all at once, for example, if you have a
19 sample from a rape examination that indicates to you there
20 was semen with an O blood group, and then a suspect is
21 arrested and you are presented with a sample of his blood
22 showing that he was a B blood group and a B secreter, that
23 blood type would be inconsistent with the evidence found
24 at the scene, right?

25 A That's correct.

26 Q And you could be fairly certain that that evidence
27 excluded the suspect as the person who deposited that sample,
28 correct?

1 A I would just say it's inconsistent with him.

2 Q But you'd have a pretty high level of certainty,
3 given the laboratory result showing the blood typing?

4 A Yes.

5 Q Alright. In fact, speaking of levels of certainty,
6 in your field of laboratory analysis or forensic analysis,
7 virtually all of your opinions have to be evaluated as to
8 how certain they can be, based on the evidence that you have;
9 isn't that right?

10 A I don't understand your question.

11 Q Okay. In other words, any time you state an opinion
12 based on your examination of some evidence from a scene, for
13 example, in a rape case, once you have your laboratory results
14 you have to make a decision about what your opinion is,
15 correct?

16 A That's correct.

17 Q And in making that decision you have to evaluate
18 what your own level of certainty is, based on the scientific
19 evidence, right?

20 A Yes.

21 Q How confident you feel about your results or your
22 opinion, right?

23 A Correct.

24 Q And in doing that, for example, one of the phrases
25 or indicators you would use to show that level of certainty
26 would be the phrase you mentioned a little bit ago, these
27 findings are inconsistent with a theory or a finding, right?

28 A Right.

1 Q And another phrase you'd use is "consistent with";
2 is that right?

3 A That's right.

4 Q When you did the evaluation of Mr. Daye's blood and
5 compared it to the samples from the scene in this case,
6 involving Mrs. Coleman in February of this year, you did
7 form an opinion and state it in a report, didn't you?

8 A I did.

9 Q And the opinion you stated at that time was that the
10 blood grouping results on the crotch, the left leg, and the
11 right leg of the jeans do not eliminate this suspect; is that
12 right?

13 A That's correct.

14 Q And that phrase "do not eliminate" is one of those
15 indicators that you use to show the level of certainty of
16 your opinion, isn't it?

17 A I don't believe I use it to indicate the certainty
18 of my opinion, no.

19 Q Okay. In this case, didn't you use the phrase
20 because you didn't have a strong enough finding to really
21 say that the findings were consistent with Mr. Daye being
22 the person?

23 A That's correct.

24 Q Now, going back for a moment or two to the question
25 I sort of began here, and that's the distinction between
26 including and excluding people by blood grouping.

27 In a paternity case, for example given an appropriate
28 set of facts about the relationship between parents and the

1 blood group of the mother, father, and the child, it's
2 possible many times to positively exclude an individual
3 as the father, isn't it?

4 A That's correct.

5 Q Whereas in the same kind of case, for example,
6 by evaluating the blood typings, it would be possible to
7 say that there is a certain percentage in the population
8 which could have been the father, and the individual in
9 court is in that group. Right?

10 A That's correct.

11 Q And in evaluating the significance of the O secre-
12 tions in this case, as they relate to Mr. Daye, what you are
13 attempting to do is state some level of opinion about whether
14 Mr. Daye is included in a group of people who may have been
15 involved, right?

16 A That's correct.

17 Q Now, it's generally accepted that the percentage
18 of blacks who have an O blood grouping is right around 47
19 percent, isn't it?

20 A In that ball park, yes.

21 Q And it's generally accepted that of the population
22 at large, roughly 80 percent are secreters; is that right?

23 A That's correct.

24 Q So, in looking at the circumstances in this case,
25 we would say that 80 percent of 47 percent of the black males
26 in the community would fit the results that you have in this
27 case; isn't that right?

28 A That's correct.

1 Q So, something a little over 35 percent of the black
2 males in the county would be consistent with your findings
3 here?

4 A That's correct.

5 Q So, if I brought 100 black men in here at random,
6 and we blood tested them, we would expect, if it was a truly
7 random sample, that 35 of them would fit these results?

8 A That's correct.

9 Q Now, your testing of Mr. Daye's blood type from
10 the sample drawn by medical personnel showed a pgm grouping
11 of II-I; is that right?

12 A That's correct.

13 Q Pep A of I?

14 A That's right.

15 Q Now, on the line concerning evaluation of his
16 saliva, you have just a straight line through the "pgm" and
17 "pep A" section. Why is that?

18 A That means his saliva was not tested for pgm or
19 pep A.

20 Q Why was it not tested for those?

21 A Pgm and pep A is not found in saliva.

22 Q Okay. Would they ordinarily be found in semen?

23 A Yes, they would.

24 Q Okay. When you tested the areas of the jeans,
25 which shows an O blood type, the same as Mr. Daye's blood
26 type, you were unable to get any activity at all in either
27 the pgm or pep A categories; is that right?

28 A That's right.

1 Q So, based on your findings, you don't have any
2 idea what the pgm or pep A types of the rapist would have
3 been, right?

4 A That's right.

5 Q So that those two factors, or those two groupings
6 did not assist you at all in trying to narrow down who was
7 or may have been the rapist?

8 A That's right.

9 Q And conversely, they don't help at all in trying to
10 exclude Mr. Daye as one of the people who could have been
11 involved?

12 A That's right.

13 Q Would it be fair to say that your job with the
14 laboratory is basically to apply scientific principles, to
15 try and develop evidence for legal purposes?

16 A Yes.

17 Q And in doing that, what might generally be referred
18 to as forensic analysis, when you form an opinion, you
19 always have to take into consideration the factors surround-
20 ing the creation of the evidence you've evaluated, don't
21 you?

22 A Yes.

23 Q So, for example, referring to -- I think another
24 area you indicated you have some background in is reconstruc-
25 tion of crime scenes, right?

26 A No, I did not.

27 Q You didn't say that?

28 A Crime-scene processing.

1 Q Processing, okay.

2 To use an example from there, then, I think you
3 stated on direct examination that, in examining the crotch
4 area of the jeans, it was your opinion that there was very
5 likely some combination of semen and vaginal fluids in that
6 sample; is that right?

7 A That's right.

8 Q And that opinion is based on your knowledge of
9 human anatomy and the fact that during sexual intercourse
10 you would expect to see some vaginal secretions produced
11 by the female, right?

12 A That's right.

13 Q And because of the proximity of the crotch of the
14 pants and the vagina of the female, you'd expect that there'd
15 be some fluid deposited there, right?

16 A That's right.

17 Q Now, you mentioned that you had some hair samples
18 that were provided to you as part of your evidence, or the
19 materials processed in this case.

20 Did you make any analysis or comparison of any of
21 the hair samples you had?

22 A No, I did not.

23 Q And why didn't you do that?

24 A I am unqualified to do that.

25 Q Okay. Was there any indication to you in this
26 case, as a forensics scientist generally, that there had been
27 some hair, for example, taken from the victim that was not
28 her hair and should be evaluated?

1 In other words, even though you were provided with
2 hair from the victim and hair from Mr. Daye, those facts
3 alone would not give you any reason to perform a comparison
4 or provide you with any basis for an opinion, finding that
5 the hair was different, would it?

6 A What hair are we referring to?

7 Q Well, let's refer to head hair for a moment, okay?

8 If you had a rape case, you received hair from
9 a victim and hair from a suspect, and if there was no
10 indication that there had been samples left on the victim
11 by the suspect or by the perpetrator, then comparing the
12 two head hairs really wouldn't help you get anywhere.
13 There wouldn't be anything to evaluate, would there?

14 A That's right.

15 Q Was there anything in that case to indicate that
16 there should have been an evaluation?

17 A No, there was not.

18 Q You were also provided with a screwdriver as part
19 of the evidence gathered in this case; is that right?

20 A That's right.

21 Q And it was your understanding that that had been
22 taken from the vehicle where the crime occurred?

23 A Yes, that's my understanding.

24 Q And you processed or tested that object for
25 fingerprints, didn't you?

26 A That's right.

27 Q And were unable to find any?

28 A That's correct.

1 Q You also received some kind of a key that would
2 be like a standard doorkey; is that right?

3 A That's right.

4 Q And processed that for fingerprints?

5 A That's right.

6 Q Didn't find any?

7 A That's right.

8 MR. MUNKELT: Thank you.

9 Nothing further.

10 THE COURT: Redirect?

11 MR. WILLIAMS: Just a couple of things here.

12
13 REDIRECT EXAMINATION

14 BY MR. WILLIAMS:

15 Q The statement you made on direct, you felt, based
16 upon your findings, that the stains on the left leg of the
17 jeans marked Exhibit 17 and on the right leg of the jeans
18 contained semen that was consistent with the blood type
19 that -- possessed a blood type consistent with Mr. Daye's;
20 is that fair?

21 A That's correct.

22 Q On cross-examination you felt, or you stated that
23 you could not exclude Mr. Daye from the category of blood
24 type that you found in the same test?

25 A That's correct.

26 Q Is that saying the same thing two different ways,
27 to you?

28 A Yes.

1 Q I mean, as far as the English language goes and
2 your application of the English language to these findings,
3 is that the same thing two different ways?

4 A Yes, it is.

5 Q How about this lack of pgm and pep A on the leg
6 area of the jeans, the right and left leg area, where you
7 show no activity; is that as a result of a lack of sufficient
8 stain material, or what?

9 A It could be one of many reasons. In this case,
10 I felt it probably was the fact that I couldn't get a
11 concentrated enough sample.

12 Q Of the three types of groupings that you have got
13 here, that is the A-B-O, the pgm, and the pep A, are there
14 degrees of ease with which, or is it easier to get A-B-O
15 than it is pep A, or vice versa, or --

16 A Yes, it is.

17 Q Do you get the gist of my question?

18 A Yes, I do.

19 Usually it is easier to get an A-B-O result than
20 it is pgm or pep A.

21 Q Is that because the chemicals that give rise to
22 resulting A-B-O findings is stronger or something, or do
23 you know the answer to that question?

24 A There are several different reasons why. A-B-O
25 will exist longer in stains than pgm and pep A do, so it
26 is around longer to be typed.

27 And in some instances the A-B-O tests may be more
28 sensitive.

1 Q And the vaginal swabs, the absence of a finding
2 there you explain how?

3 A I did not group the vaginal swabs. I didn't
4 come to a finding on them except to detect semen.

5 (Pause.)

6 MR. WILLIAMS: Okay. Thank you.

7 THE COURT: Recross?

8 MR. MUNKELT: Nothing further.

9 THE COURT: Thank you very much, Mrs. Peer. You
10 may be excused, if there is no objection.

11 MR. WILLIAMS: Yeah, may the witness be excused?

12 Thank you.

13 People call Darren Wells to the stand.

14 THE CLERK: You do solemnly swear that the testimony
15 you are about to give in the matter now pending before this
16 court, shall be the truth, the whole truth, and nothing
17 but the truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Please be seated at the witness stand.

20 And please state your full name, and spell your
21 last name for the record.

22 THE WITNESS: Darren E. Wells, W-e-l-l-s.

23 THE COURT: Would you spell the first name, too, please.

24 THE WITNESS: D-a-r-r-e-n.

25 THE COURT: Thank you.

26
27 DARREN E. WELLS.

28 a witness herein, called by the People, having been first