VOL II

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

STATE OF LOUISIANA	*	NO. 87-0205
VERSUS	*	DIVISION "G"
WILLIE JACKSON	*	

Testimony and proceedings taken in the above numbered and entitled matter on August 24, 1989, before the Honorable Frank V. Zaccaria, Sr., Judge Ad Hoc, and a jury.

APPEARANCES:

Alan Green, Esq. — Assistant District Attorney

Phillip E. O'Neill, Esq. and Mark Burton, Esq. — Attorneys for Defendant

REPORTED BY: Faye B. Cemo, CSR

JOSEPH WARREN, 1542 Tulane Avenue, New Orleans, Louisiana, was called as a witness, and after having first been duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

MR. GREEN:

Q. Mr. Warren, by whom are you employed?

A. I am currently chief forensic molecular biologist for Louisiana Laboratories and Forensic Science, which is located at LSU Medical School. I am also self-employed at my own private forensic consulting business.

Q. And how long have you been so employed?

A. Since August of 1988.

Q. Were you employed previous to that time?

A. Yes, sir, I was.

Q. By whom were you employed at that time?

A. By the Jefferson Parish Sheriff's office, crime laboratory.

Q. And in what capacity were you employed by the Sheriff's office?

A. I was their forensic biologist.

Q. And how long did you work in that capacity?

A. From July, 1984 till August, about 1988.

Q. And would you give me some insight, or give the Court some insight as to your educational background.

A. Yes, sir. 1978, I obtained a bachelor of science degree in biology from Tulane University.

In 1980, I obtained a master of science degree in biology with specialization in sub-biology--

THE COURT:

Excuse me--

MR. O'NEILL:

Your Honor, I don't mean to cut him off, but maybe we could stipulate and save some time if he's going to testify that he is a biologist. I am not going to argue against that. I will be willing to stipulate to that.

THE COURT:

All right.

MR. O'NEILL:

College graduate in biology, and he's going to testify to things that a biologist testifies to.

THE COURT:

Is that what your testimony consists of, sir?

THE WITNESS:

Yes, sir.

THE COURT:

All right. The Court understands there is a stipulation, and he would be allowed to testify as an expert in that field.

MR. GREEN:

Thank you, Your Honor.

MR. GREEN:

Q Now, Mr. Warren, would you explain to the jury the

nature of the kind of work you do.

A. Yes, sir. In the field of forensic biology, we are basically concerned with the analysis of body fluids such as blood, saliva, seminal fluid, vaginal fluid, perspiration. And we obtain various genetic markers from those fluids. Genetic markers is a substance you inherit from your mother and your father. It stays with you throughout your natural life. What we try to do is to isolate these genetic markers and match up the genetic markers and any body fluids at the crime scene to match them up to the known suspects, or known accused concerning the crime.

Q. Now, what is the significance of the information that you obtained as a result of this type of analysis?

A. Basically, what we try to do is to--well, in the case here, conventional genetic markers, the ones we are talking about today, your blood group, and enzymes, is we try to see whether the body fluids is found in connection with the crime contain the same genetic markers as that of either the suspect, or the victim, and what percent of the population will have those genetic markers. Or if they are different, we could exclude someone from being a suspect in the crime if we find a different type of genetic marker than those obtained at a crime scene.

Q. Now, can this be applied to the determination of differentiation of blood typings?

A. That is correct, that is one of the genetic markers we look for.

Q. And it would be determined as far as analysis of sperm, or semen?

A. That is correct. It's a body fluid.

Q. And what type of analysis can be made in that instance?

A. There are several types initially. What we do is we get an article of evidence, such as piece of clothing, for instance, a weapon used, something found at the crime scene. And we look to see if there is any stains, or any body fluids that could be found on it. If there are, we then attempt to determine what that body fluid is, whether it is blood, saliva, seminal fluid. Once we determine what that body fluid is, in the case of blood, for instance, we try to determine whether it's human or non-human.

The case of seminal fluid, we try to see whether it is sperm there, or no sperm. At that point we then do look for these genetic markers. First of all, we look for these blood types. Most of you, I'm sure, are familiar with it. There are four types of blood: Type A, type B, type O and type A-B. We also try to go beyond the blood types and try to get better discriminating factor by looking for other genetic markers.

In this particular case we looked for a specific enzyme, or PGM. PGM is an abbreviation for a rather long word which we don't have to go into right now. But the enzymes, again, like blood types are genetic markers. And there are three main types: PGM type 1; PGM type 2-1; and PGM type 2. PGM's is found both in your blood, and in seminal fluid. Also in seminal fluid, we try to determine whether a person is secretor, or non-secretor.

A secretor is a person who we can determine their blood type by looking at other body fluids such as saliva, vaginal fluid, or seminal fluid. It is genetically determined by your genes called the Louis gene. Eighty percent of the population are secretors. That means if I took a person who is a secretor's saliva sample, I could get a blood type off that using various tests. A non-secretor is someone who does not have that gene, and who does not pass their blood type on to their other body fluids.

Approximately twenty percent of the population are non-secretors. So, if I took the saliva sample from a non-secretor, I cannot get a blood type off that. Those are the main genetic markers that we looked for in this particular case. There are others, too, that we look for nowadays, also.

Q Now, Mr. Warren, I would like to show you what I have

marked as State's No. 25. I would like to ask you if you can identify it, and if so, how can you identify it (indicating)?

A. This is a laboratory report that was issued in January of 1987 concerning an aggravated rape that occurred sometime in 1986, I don't know exactly when. And this is a report with my laboratory results on it. I can identify it because my signature is on it, and the signature of our crime director at the time signed it, also, crime lab director.

Q. Would you also examine the second page, and identify it.

A. That is page No. 2 of my crime lab report.

Q. What does that report contain?

A. This report basically contains the evidence I received; when I received it; who I received it from; our laboratory number and the offense; the type of examination that was requested; the name of the victim; the name of the accused; a description of the evidence that was given to me. And it contains my laboratory results that I obtained after I performed the tests.

Q. Now, would you describe the evidence that you were given as per your report.

A. Yes, sir. On specimen No. 1 is listed as a crime laboratory rape evidence kit, which we obtained from the victim. This kit includes a known tube of blood. And that is obtained so I could find

out what genetic markers are present in our victim's blood. So, we know which one in this case she has.

Q. Were you able to make any determination as to genetic markers?

A. Yes, the victim is type B, blood type B with enzyme group PGM type 2-1. We also required, after taking known sample of saliva from the victim to see whether she is a secretor, or a non-secretor. In this particular case, the saliva revealed type B secretor activity, which means she is a secretor, and you could find the same in her blood type, type B, and her saliva, and her other body fluids.

We also obtained fingernail scrapings in the rape kit. Fingernail scrapings, we test basically for the presence or absence of blood. In this case, blood was found under the fingernails, but the analysis was insufficient--there was insufficient amount of blood for further analysis, which means all I can say is it is blood. I can't say anything else about it, whether it's human, or non-human, or whatever, but just enough to say blood was present underneath the fingernails. Whose blood, I don't know.

We also obtained a vaginal and rectal swabs. We test these for presence of seminal fluid. If seminal fluid is found, we then try to again

to isolate genetic markers. In this particular case, however, no seminal fluid was found in the vaginal or rectal swabs.

We also obtained vaginal smears, a test for presence of spermatozoa. We do this mainly to see where the sperm was present, and that is an indicator whether intercourse occurred or not prior to the examination. In this case, the vaginal smear was negative. So, there was no spermatozoa found on the vaginal smear.

Our second piece of evidence, we received specimen No. 2 on our report is a--it is described as a red colored plastic bag containing one black and gold button type shirt, medium size, with a red substance. One multi-color type jacket, brand name California Krust, size 38 with a red substance on it. And one gold color pantyhose.

Before I give the results of that, I do want to mention we obtained a rape kit from the suspect. The rape kit from the suspect basically contains known samples of the suspect's saliva and blood, and known samples of his pulled head and pulled pubic hairs so we could determine what genetic markers are present in the suspect's blood to see whether they are the same, or different from the genetic markers we might isolate in this case.

The suspect was found to be blood type O.

Blood type O with enzyme groups PGM type 1. We analyzed saliva and we could find no blood typing present which indicates the suspect is a non-secretor.

Q. Now, can I stop you there for a few moments--I will allow you to continue afterwards.

Was the suspect's blood type the same as the victim's?

A. No, sir, the victim, as I said before, was type B, PGM type 2-1. The suspect was a type O, with PGM type 1. Based on those two markers, I was able to discriminate between the suspect and the victim's body fluids that may have been found with this case.

Q. Would you continue with your report--

A. Yes, sir.

Q. --and evidence.

A. Yes, sir. We examined the clothing, which I detailed earlier, from specimen No. 2. And the results were that an analysis of the jacket and pantyhose from specimen No. 2 revealed the presence of human blood with blood type O. This is the same as in specimen No. 9, which is a known tube of blood from the suspect. We also did enzyme analysis, but did get inconclusive results. Inconclusive means they were non-readable. There is various ways that could happen, either it had degraded somewhat, or some substance, such as bacteria, or perhaps

substance with the clothing interfered with the examination. Something we could not get any enzyme types from those blood samples. We did, however, say it was human blood which was type O blood, which was the same as the suspect's.

We also analyzed the shirt from specimen No. 2. And that revealed human blood to be present with blood type B. And enzyme group PGM type 2-1. These are the same genetic markers as are found in the victim's known blood sample.

Q. Was there any determination of the suspect's blood type in that article of clothing you examined?

A. As I said before, on the jacket and pantyhose, type O blood was found to be present.

Q. And the blouse?

A. It was type B blood, enzyme type 2-1.

Q. Did you--was there any other evidence submitted to you for analysis?

A. Yes, sir, there was a vial containing green carpet from the rear floor board of the accused's vehicle. And they gave a description of the vehicle, 1979 Chrysler Cordoba, with Louisiana License Plate, there is no reason to read the plate number, but it's 783B159, 1987. We obtained a vial containing vacumned debris from rear floor board of the accused's vehicle. And I will talk about that a little later. Mostly look for hairs. And I would like to talk

about those a little later. I prefer to get through the body fluids stuff right now so we have that all together.

We received a--No. 6 is a one brown Knee-hi sock found on rear floor board of the accused's vehicle. And No. 6 failed to show any stains at all. There is no blood or no seminal fluid found in No. 6.

No. 7, we received six rags. There were four wash rags and two towels that were found under the seat of the accused's vehicle. My analysis on specimen 7 revealed two types of stains. One type was the presence of human blood that revealed blood type B activity to be present. Again, this is the same as the victim's blood. The second stain was seminal fluid, spermatozoa; secretor status was inconclusive. We failed to obtain a secretor status. We did enzyme analysis on it and the enzyme analysis revealed PGM type 1. That is the same enzyme as found in specimen No. 9, the victim's--excuse me, the accused's genetic markers. I will go over that one more time.

Analysis of one of the rags, specimen No. 7, revealed human blood with blood type B. Enzyme analysis was inconclusive. Blood type B is the same type as found in the victim's blood. We also found seminal fluid, spermatozoa. Secretor status was inconclusive; however,

enzyme analysis revealed presence of PGM type 1, which is the same enzyme as found in the suspect's blood.

We also had evidence No. 8, which is one lady's shoe, tan in color, brand, Naturalizer. On the shoe we found human blood with type B, and type O activity to be present. This is the same types as found in type--in the victim's blood and also the suspect's blood. However, from that piece of evidence, I can't say whether again whether or not--it is quite normal for people with type A blood, or type B blood to also show type O blood activity. And there is a basic biological reason for that. Everyone who is type A, or type B was born with what we call type O. And as you get older, the development of the fetus, that type O blood gradually changes to either A, or B, depending on what gene you have.

However, you always have some residual O in you. So, in that case, I can't tell whether that type O activity came from a person who is type B, and just showed some type O left over, or whether we are dealing with blood from a blood type B individual mixed with blood from type O individual.

Q Now, that was on the shoe?

A. This was on the shoe, correct.

Q But did you incur those other problems with your

analysis of the other items?

A. No, sir.

Q. Now, what I would like to do at this time is show you what has been marked as State's exhibit 12, 13--

A. Excuse me, before we go into that, can I finish my analysis--

Q. Yes.

A. I did analyze article No. 3, vial of carpet, article 4, vacumned debris, and article No. 5, a white hair barrett found under the seat of the accused's vehicle. I was not able to come up with a conclusive analysis of the hair comparison. Hair comparisons are basically through microscopic examination with known samples of victims, known samples of suspect's hair with your evidentiary samples. However, because of the victim and the suspect had hair that looked very similar, at least to me under the microscope, I could not differentiate between the two. Therefore, I could not come to no conclusions at all as to whether foreign hairs were found or not of different people.

Q. Now, you say there was a similarity in the victim's hair--

A. Yes, sir, they looked too much alike, the victim's and the suspect. I could not really differentiate between the two.

Q. Have you encountered this before, insofar as hair analysis?

A. Yes.

Q. Is this attributable to any particular characteristic?

A. In this case, both--I believe the victim and the suspect are both black. A lot of times you do find a bit more similarities between black than you do between two different Caucasians. However, hair analysis is not something--I can't give exact figures on that. It is something that I could say someone's hair is similar, I can't say it is that person's hair. And sometimes between two Caucasian people, if someone has hair similar to mine, for instance, the same color, the same texture, that may be difficult to differentiate. That is not an unusual problem.

Q. Now, Mr. Warren, can you tell us are you familiar with DNA testing?

A. Yes, sir, that is what I have been doing for the last year at the med school. I work for DNA testing. I also testified in front of Louisiana legislature, their subcommittee on crime. I was recognized as an expert in DNA.

Q. What was your reason for testifying before the legislature?

A. The State was interested in--

MR. O'NEILL:

That is not relevant. We don't need to hear that. That is not relevant to this case.

MR. GREEN:

Your Honor, I think the question of DNA has

been raised. I would like the opportunity for our expert to testify as to his knowledge of this at this time.

THE COURT:

All right. There was a question asked of the previous witness. Answer the question, sir.

THE WITNESS:

The State was interested--they wanted to pass a bill to make it so that paroled sex offenders could have their blood drawn for DNA analysis, put in computer banks similar to what they do with fingerprints, and also to perhaps open up a statewide DNA testing laboratory. And they called me in to provide expertise in just what the DNA can, or cannot do.

MR. GREEN:

Q Is there presently a statewide DNA testing laboratory?

A. No, sir. There probably won't be until the State gets some extra money.

Q To your knowledge, has DNA been used in any courts up to this point?

A. In paternity cases, yes, sir, we have--I have been doing it for paternity cases in Louisiana right now since October. We have worked several rape cases for East Baton Rouge Parish, district attorney's office. But they have not gone to court yet in criminal cases.

Q Was this available to you when you did the testing in this matter?

A. In 1986, no, sir, it was not available, not in the United States.

Q. Not in the United States?

A. No, in England they had just started to using it, Dr. Jeffers (phonetically).

Q. I would like to show you at this time what I have marked as State's exhibit 12, 13, 14, 18, and 26. And although I realize that I am about to hand you an arm full of things, I'm going to do so individually in the order in which I gave you the numbers.

I would like for you to state whether you can identify these items, whether or not you have ever seen them before; how it is possible for you to determine that you have seen them before, and how did you come about seeing them before, if you have.

A. This is State's exhibit No. 12 is listed as specimen No. 2, black and gold shirt and blouse. Yes, I recognize my initials, J.W. on the collar of the shirt. Here is where I took someone's cutting from the stain I found on the shirt (indicating).

Q. And this was one of the items that you analyzed, is that correct?

A. Yes, sir, according to my laboratory report, this specimen here, State's No. 12 is listed as specimen No. 2.

Q. And what were your results on specimen No. 2?

A. On the black and gold shirt, specimen No. 2, that was human blood with a blood type B, PGM type 2-1, same genetic markers as that of the victim.

Q. And State's exhibit No. 13, would you identify it, please.

A. Thirteen is also part of exhibit No. 2, which is the gold color pantyhose. Again I see what is my initials on this (indicating). I see a little hole where I cut the stain out to use for my testing. And on this particular piece of evidence, this was found to be human blood with blood type O, the same as the accused blood type. And enzyme analysis was inconclusive, however.

Q. State's exhibit No. 14.

A. Fourteen is listed as a specimen No. 7 on my report. And that is six rags that were obtained under the front seat of the accused vehicle. My initials on the rags, cuttings I made from one of the rags. And on this, we found both human blood and seminal fluid that contained sperm. The human blood was blood type B. The activity-- B activity was found. This is the same as found in specimen No. 1, the victim's known blood. Enzyme analysis, however, was inconclusive. The seminal fluid, we could obtain no secretor status from it. However, in seminal analysis showed PGM type 1, the same as found in the known blood of the suspect.

Q. You stated earlier that the suspect, Willie Jackson, was not a secretor, is that correct?

A. That is correct.

Q. And the victim was a secretor?

A. That is correct, yes.

Q. Now, State's exhibit No. 18.

A. Eighteen is a multi-colored jacket. It is listed again as part of specimen No. 2. And I see my initials on it, and here is where I took some cuttings (indicating). Here is where I took some cuttings. This particular one, the multi-colored jacket, revealed human blood with blood type O, same type as the accused. However, enzyme analysis was inconclusive.

Q. Finally, State's exhibit No. 26.

A. No. 26 is listed as specimen No. 9 on my report. No. 22 should have been specimen No. 8. One lady's shoe. This looks either like a--this says "lady's shoe, tan in color." It's either a 7 or a 9. But I do see my initials on this (indicating). And according to my lab report, a lady's shoe, tan in color, Naturalizer brand was found to contain human blood with blood types B and type O activity to be present.

Q. So, on that one you found both blood types to be present--

A. Yes.

Q. --is that correct?

A. Yes.

Q. Now, Mr. Warren, getting back to the rape examination kit, and your analysis, were you--you stated you were unable to detect the presence of seminal fluid, is that correct?

A. That is correct, yes.

Q. Did that in any way lead you to conclude that a rape had not been committed?

A. The only conclusion, it's not up to me--

MR. O'NEILL:

Objection, Your Honor. I don't think that is in his field of expertise. He is a biologist. And now due to the absence of seminal fluid to say whether a rape did or did not occur, I think that is a conclusion for the jury, not him. He's not qualified to say.

MR. GREEN:

I did not ask him that, Your Honor. I asked him did it lead him to conclude that. It's just a yes or no answer.

THE COURT:

That is an opinion that is not part of his--his specialty. And I'm going to sustain the objection.

MR. GREEN:

Q. Did you perform any other tests, Mr. Warren?

A. No, sir, not according to this report, no other tests that I performed.

Q. Were any other conclusions found as part of your report, or your analysis that you have not

informed the Court of?

A. No, sir.

Q. That is your complete report?

A. That is my complete report, yes, sir.

MR. GREEN:

Thank you, I have no other questions at this time. Would you answer Mr. O'Neill's questions.

MR. O'NEILL:

May I approach the Bench?

(Discussion off the record at the Bench.)

THE COURT:

This seems to be the appropriate time to recess. Mr. O'Neill indicates that he will be quite a while on cross examination. There might be re-direct examination. We're going to break now until 1:15.

(Whereupon, a luncheon recess is taken.)

(The jury is removed from the courtroom.)

AFTERNOON SESSION

(The jury is returned to the courtroom.)

(Joseph Warren is returned to the witness stand.)

CROSS EXAMINATION

MR.O'NEILL:

Q. Mr. Warren, I'm Phillip O'Neill, attorney from Gretna.

A. Yes, sir.

Q. Mr. Warren, at the time that you conducted these tests you were in fact a member of the Jefferson

Parish Sheriff's office, is that correct?

A. That is correct, yes, sir.

Q. And you would be what is known as a forensic chemist?

A. Forensic biologist is my official title.

Q. Although you are not a regular police officer who drove around with a badge and gun, you worked for that office?

A. That is correct.

Q. It's your testimony to the ladies and gentlemen of the jury that as a forensic biologist you conducted these tests very professionally and very carefully, isn't that correct?

A. Yes, sir, I tried to do the best job possible.

Q. And, of course, you are school trained, and a number of years of experience?

A. That is correct, yes, sir.

Q. In fact, even from your testimony you have gone on to what seemed to be future, larger responsibilities?

A. That's correct, yes, sir.

Q. Now, after you conducted the tests on the swab, the anal swab, okay, was it--and I'm referring to, if you will excuse me, to the rear portion of this lady, it was your conclusion then that there was no spermatozoa, and in fact, no seminal fluid to be found on that swab taken from her anal orifice, is that correct?

A. That is correct, yes, sir.

Q. Okay. Nothing whatsoever?

A. That is correct, yes, sir.

Q. Now, sir, can you tell the ladies and gentlemen of the jury what kind of test that was--was it microscopic, or was it just a chemical reagent?

A. Both. There were two types of tests we do. The first test is a screening where we look for an enzyme that is found in higher concentrations in seminal fluid, other body fluids. It's a simple chemical test, the enzyme is present, the reagent, or chemical we add to an extract taken from a suspected stain, or vaginal, or rectal swab, will turn a deep dark purple color in thirty seconds, or less. If it turns a pink color, or a light purple color in a minute or more, it's a false positive. Or if it doesn't change color at all, there's nothing to be found. At that point I say no seminal fluid is found.

If, however, I get a positive result, I then go on to do conformatory tests, to do tests to make sure there is seminal fluid. And there are two types of tests I do. First I try to make a microscopic examination whereby I look for the presence of spermatozoa under a microscope. It's a fairly simple test. I take the extract of the stain, or the vaginal swab, or rectal swab. I will extract it in a solution of saline, salt water with the same salt concentration as your body has. It is called a saline solution. And I will then take a small portion of that and put it under a microscope, put it on a slide, let

it dry. And I will then add two types of stain. The first type will stain the chromosome material found at the head of the sperm red. The second type will stain the fatty material and the proteins found in the tail of the sperm green. So, it is commonly known as Christmas tree stain.

Sperm has a very definite morphology. Morphology is seeing how something looks under a microscope. Someone who is trained properly can look at the sperm stained in a specific manner and tell right away whether it is present or not.

The presence of sperm is a definite indicator that seminal fluid is there, and it indicates, let's say a rape kit, that at least some type of sexual activity occurred prior to that test being taken. However, if I do get a positive on a presumptive test, test for any seminal fluid, stain will turn purple, but no sperm, that still might mean seminal fluid is present, it just means the sperm might have been graded, or perhaps the male seminal fluid, it doesn't produce sperm either through some sort of disease process, or through vasectomy, or something. So, at that point, I will then look for other proteins that are specific for sperm, or specific for seminal fluids, but not found in other fluids. So, those are the three--for

me to call something seminal fluid or not, it has to pass two out of three tests.

In this particular case, all I needed to do was I looked at the presumptive test, and both the vaginal swab and the rectal swab. There was no change of colors whatsoever which showed me--which told me that no seminal fluid was present. There was also some vaginal smears given to me to look under the microscope for sperm. And I found no sperm present on those.

Q. That was my next question, Mr. Warren. What I would like to ask you in reference to the test, or series of tests that you performed in reference to the anus, does that qualify under a specific name? Is this a form of the colormetric examination that has a particular name that was--

A. Yes, the test performed on the rectal swab was looking for the presence of an enzyme called acid phosphatase. We used the chemical which I make up. It consists of several other chemicals. It is called acid phosphotase reagent.

Q. And basically this is a colormetric examination where it will change color?

A. It changes color from colorless to deep dark purple in thirty seconds, or less.

Q. If you will permit me to shift focus to the front of the vagina. You performed the same series of tests?

A. That is correct, yes, sir.

Q And your conclusions were the same, you found absolutely no sperm, or no seminal fluid whatsoever?

A. That is correct, yes, sir.

Q. Now, Mr. Warren, could I ask you this: In reference to the test performed on the vagina, in your experience as a forensic biologist, how many of these tests would you have performed?

MR. GREEN:

Your Honor, I'm going to object to the form of the question. He states in reference to--as I understand it, or recall, the examination performed on the vagina, is that what you--

MR. O'NEILL:

The form of the question--he's an expert, this is cross examination. And he can be led. I don't see what is wrong with the question.

THE COURT:

As I understand the question, Doctor, he wants to know how many types similar to the ones you testified about you have performed. Is that what you want?

MR. O'NEILL:

Sure. I want to know how many of these he has done. Is this the first one he ever did, and could he be wrong.

MR. GREEN:

Are we referring to the examination?

THE COURT:

No, not the examination, the tests.

MR. O'NEILL:

The kind of tests he run.

THE COURT:

The same thing he has been testifying about today.

THE WITNESS:

That is a hard--over the past five years, I have been doing this, and this occurred in 1986. So, I'm doing it a little over two years at the time. To give an exact answer, I can't do that. We average approximately between 100 and 250 rape cases per year in Jefferson Parish. And each rape case could have anywhere from one to I have had as many as fifteen pieces of evidence, quite a few I would say, a couple of thousand, anyway.

MR. O'NEILL:

Q. Thank you. Now, Mr. Warren, as a forensic biologist, you, of course, are familiar with the term "motile sperm", is that correct?

A. That is correct.

Q. Would you tell the ladies and gentlemen of the jury what you understand about that.

A. Motile sperm basically is a sperm that is found that is still moving. It's still alive, basically. They look for it by microscopic tests, or they will take--in this particular case, in the case of a rape examination, the attending physician

will take a sample of the vaginal swabbing, sample of the vaginal material, and put it on a glass slide, probably again with the saline solution, and look under a microscope and see whether he could see the sperm swimming in the saline solution. This usually means--this means that the sperm is present, and is moving, and it is still alive at the time it is present.

Q. Could I ask you this: Based upon your years of experience before this particular test was run, what is the average life of motile sperm?

A. Motile sperm, they have found it--it's not unusual to find it up to twenty-four hours. They have found it up to forty-eight hours. Sperm itself has been found up to five days after intercourse, but it's not motile at that point, it has already died.

Q. Now, do you recall the test that you ran in reference to the head hair?

A. Basically, in my previous testimony was that what we do there, it's a microscopic examination. I will take a sample of the hair, put it on a microscope slide, and a mounting median like a glue, basically glue median. Of course, special properties for a microscopic examination, put another thin piece of glass right on top of that, and look under what is called a comparison microscope.

A comparison microscope is basically two

microscopes joined together so I could compare two individual articles side by side at the same time. And we looked again for the basic similarities among hair, microscopic similarities, things such as hair color, again the morphology of hair.

Hair, it has its own type microscopic anatomy. And I could basically look to see whether this hair is similar, or different. If it is similar, I could say it is similar, but I can't say whether it came from that person or not with respect to the general population because no one knows how many people have the same type hair. I can definitely say that hair is different.

In this particular case, like I said before, with my own personal opinion, professional opinion, that the hairs that the suspect had, the victim had just looked too much alike under the microscope for me to safely come up with any definite conclusion.

So, in that case because they shared some similarities, they also had some differences, it was too many similarities for me to feel comfortable with making an opinion on this other than an inconclusive one.

Q Let me ask you a hypothetical question, Mr. Warren. If I were in fact the person who were accused in this case, instead of the lawyer, and my hair,

either from my head, or from my pubic area had been found on the body, let's say the vagina, and the pubic hair of the lady, Miss Short, would you then in fact be able to take a sample of my hair and compare it with the hair found in the pubic area and come up with a conclusion that I had in fact been the individual who--

MR. GREEN:

Objection, Your Honor, this is speculative.

MR. O'NEILL:

He is an expert, he can answer hypothetical answers.

THE COURT:

I don't think it's speculation. This is his job. He has testified as an expert. Go ahead.

THE WITNESS:

I could say in that case that if indeed I thought they were similar, I could say the known sample of hair given to me was found to contain similar microscopic properties to the evidentiary materials. I cannot say it came from you, though, directly, I can say it came from someone who has hair like you.

MR. O'NEILL:

Q But of course that is not the situation in this case at all, is it?

A. That is correct, yes, sir.

Q Mr. Warren, can you explain to the ladies and gentlemen

of the jury what the known blood types are?

A. Yes, sir, the known type for the victim was blood type B with a PGM enzyme type 2-1. The known type of the suspect was blood type O with a PGM enzyme of type 1.

Q. Now, let me ask you this question: What are the known blood types in reference to all of the people that we--

A. Oh, there are four types. Type A, type B,type O, and type A-B.

Q. Yes, sir. Now, that is for human blood, correct?

A. That is correct.

Q. Now, if you know, and if you would, please, would you tell the ladies and gentlemen of the jury what percentage of the population has A blood?

A. Okay. Just again off the top of my head, among the white population, forty percent has A blood. Among the black population, about twenty-nine percent are type A.

Q. And do you have the statistics available for type B blood?

A. Again, off the top of my head, approximately nine to eleven percent, the white population is type B. Approximately twenty percent of the black population is type B.

Q. Because we're only interested in two others, let's skip down to the other ones. Would you give those percentages.

A. Type O is approximately forty-three to forty-five

percent in both the black and white population will have type O blood.

Q. Would it be a fair statement to ask you then that the type O blood, which you have already said is not specific to Willie, could belong to any forty-three percent of the black population?

A. That is correct, yes, sir, with type O.

Q. And do you have any idea how many people that would be just in the United States of America?

A. About two hundred fifty million people in the United States times .43. I don't have a calculator on me. But let's say three hundred million, rounded out, three hundred million times .4 is eighty million people, rounded off.

Q. Thank you.

A. Excuse me, one hundred twenty million, not eighty million.

Q. I have been told by a lady that I know to whom I am married these are called pantyhose (indicating). You may know them as something else. Could you examine those.

A. (Witness complies.) Okay. Again, I see my initials on it. And I see where I took some cuttings.

Q. Okay. That is what I wanted to ask you, if you in fact were the one who had created this individual rip or tear, or whatever, this is your work?

A. That is correct. The reason we do that is because if I find a stain, and it turns out to be a

human or any type of stain, biological stain, I try to cut that small portion off and freeze it right away so as to maintain the integrity of the stain as long as possible.

Q. Could I ask you this, if you can recall, I'm indicating to you that--and I'm not exactly sure what portion this is, but in and around either--I don't know whether that is the front, or the back. Okay. But I'm showing to you, or indicating to you what may be a small hole. Do you recall whether this was ripped like that before you got them?

A. I'm sorry, sir, I would like to, but that is almost three years ago. I really don't recall.

Q. Did you have an opportunity to examine this article, S12?

A. Yes, sir.

Q. Okay. And I want to show you what purports to be this area right here (indicating).

A. That is correct.

Q. Is this your work, you made this tear?

A. Yes, sir, I did, I made that.

Q. Now, Mr. Warren, are you familiar with the concept as a forensic biologist in tracing examination on fiber particles?

A. Somewhat, yes, sir.

Q. Were any fiber particles brought to you from the vehicle, or from any fiber particles from any place, but specifically any gleanings, or

cleanings, from the vehicle?

A. They brought a file containing green carpet from the rear floor board passenger side of what they identified as the accused vehicle, 1979 Chrysler Cordoba, two-door, green in color, Louisiana License 783B159.

Q. Now, but no lint particles, or any fiber particles, or pieces of clothing that could be shown to come from this--let me ask you this: Do you in fact do any fiber particle examinations as part of your scientific evidence--

A. At the time at the Sheriff's office I was doing some, I don't do it any more.

Q. To your knowledge, was there any fiber particle examination on any of these items done by yourself?

A. If there was, it would have been in my report. And, no, I don't see any done. I see the hair examination, the biological fluid, but no fiber examination.

Q. Mr. Warren, would you be so kind as to explain to the ladies and gentlemen of the jury what fiber particle examinations--basically, the basic theory behind a lot of forensic in general is the theory of transferring materials from one object to another. In particular, fiber, it is transfer of fiber, let's say, from one article of clothing to another, or one source fiber to another source fiber to another source fiber such

as, again, carpet to clothing, clothing to clothing. Anything that could be--any type of fibers that can be transferred. What they do there is they will look at various fibers, look for various similarities. Again, known samples, and your evidentiary samples. There are various ways that could be done, again, microscopically, you look for color. You sometimes can tell what type of fiber it is through the microscope. There are also some chemical tests to do to say whether fiber is soluble, or insoluble, and various types of acid basis, and that will help you.

And it is also more sophisticated test is used nowadays that could help identify your fibers similar from one to another.

Q Thank you. Could I ask you to--if you can recall, or even if you would look at your notes, please. What was the product of your examination from the patch, or the swab, or the cutting taken from this item? This is--I think S13.

A. This is black and gold button--black and gold shirt, or blouse?

Q Yes.

A. Okay. That is known as specimen No. 2 on this report here. An analysis of shirt revealed human blood type B, with enzyme group PGM/2-1. And that was found to be the same as the victim's blood, same genetic markers as found in the

victim's blood.

Q. Could I ask you this: On any of these fluids, whether it be seminal fluids, or whether it be enzymes, or whether it be body fluids such as blood, or vaginal fluid, are you able to date, to tell the time in which they would have been--

A. Not directly. Now, there are--a lot of these enzyme markers, which I do look for, do have certain dates where after certain period of time you can no longer find them in the stain. Such as in this case, PGM, kept it at room temperature. PGM's usually degrade anywhere from four to eight weeks. So, in that, we could get a round figure as to age of stain, but not exactly, no.

Q. Okay. Do you have these--I want to show you, this would be what would be referred to as some kind of a wash cloth, is that correct (indicating)?

A. Yes, sir, that is correct.

Q. And this would be the same thing. Was there anything taken from the two items?

A. I see my initials on it, but I don't see any cuttings.

Q. Now, how about this one (indicating)?

A. No, sir.

Q. It would be fairly characterized as a towel?

A. I imagine so, yes.

Q. That is kind of towel material. Okay. And nothing on these three (indicating)?

A. That is correct.

Q. Now, and this one is a larger white toweling (indicating)?

A. Yes, sir, that is correct.

Q. Okay.

A. And I believe this looks like probably had some cutting done along there (indicating).

Q. Now, these--let me ask you this: Okay, in questions--in reference to the longevity, these are items that would customarily be used in a bathroom, would that be correct, could very well be?

A. I imagine so, yes, sir.

Q. Now, and if--let me use myself again. If I had used these in my bathroom to bathe, one thing or another, wipe myself, washing myself, that sort of thing, and while doing that, I had deposited something on these cloths. How long would it remain on these cloths, if you know?

A. That is a tough question to answer because it would depend on what happened to the cloth afterwards. If you threw it in the corner, and stayed there, you could detect, let's say, the presence of blood several years after something had occurred and--

Q. I'm sorry, go ahead. I didn't mean to interrupt.

A. It depends what you're looking for.

Q. Let me say after I use these in my bathroom for a while, they are no longer, you know, suitable. I have other things, I put them in my car to wash my car with, and I wash my car with them occasionally. Would you still be able to find, let's say, after six months--

A. Under the conditions you described, that might be hard because you are washing it, and you are subjecting it to detergents that would wash off those stains, or at least wash them enough so we could not detect them.

Q. I understand, thank you.

I think this is S14 (indicating).

A. Yes, that would be the multi-colored shirt--multi-colored jacket.

THE COURT:

S14 was the wash rag.

MR. O'NEILL:

Thank you, Judge.

THE COURT:

Jacket is 18.

MR. O'NEILL:

Thank you, Your Honor.

MR. O'NEILL:

Q. Now, the jacket, is this your work (indicating)?

A. That looks like it, yes.

Q. Okay. Now, did you notice, or check any other rips, or tearing on the jacket?

A. I don't recall. And I don't have any notes to say whether I did or not.

Q. Could I ask you this: On the--from the jacket you took a cutting or a swab, and you found blood, is that correct?

A. That is correct.

Q. And it was type O?

A. That is correct, yes, sir.

Q. Okay. Now, from the testing, or from that cutting, could that blood by you be specifically identified as coming from the body of Willie Jackson?

A. I could say that it came from someone who had type O blood. Mr. Jackson has type O blood, and he could be one of the donators. Again, anyone with type O blood could be one of the donators on that.

Q. And that would be about eight million people?

A. No, I think we said out of two hundred fifty-five million people, it's .45, approximately one hundred twenty million, or something like that.

Q. One hundred twenty million people.

A. One hundred million, one hundred twenty million.

MR. O'NEILL:

Thank you, no further questions.

THE WITNESS:

That is without a calculator.

MR. O'NEILL:

Thank you, no further questions.

RE-DIRECT EXAMINATION

MR. GREEN:

Q. Mr. Warren, I just have a few questions.

A. Sure.

Q. Now, hypothetically, as Mr. O'Neill stated earlier, if these cloths were used in a bathroom where perhaps body fluids came off a person's body and

on to these cloths, and were afterwards washed, or laundered in a normal manner, and then used to wash a car, would those body fluids remain in these towels?

A. They would be awfully difficult to detect. And insofar as the enzyme analysis goes, or the blood type, you would not detect that at all.

Q. But you were able to detect blood types, presence of seminal fluid?

A. Again, according to my report on the towels, I found human blood, seminal fluid, and spermatozoa. Human blood was blood type B. Enzyme activity was inconclusive. On the seminal stain, blood typing, secretor status was inconclusive, but enzyme analysis did show PGM type.

Q. Now, have you ever conducted such tests from the rape kit with regard to what you were asked earlier about the presence of sperm, and no sperm was found in the rape kit, or in your examination of that rape kit?

A. Yes, sir, I found that has happened several times where you get a rape kit, you don't find sperm or seminal fluid present.

Q. So, that has happened in your experience?

A. That is correct, yes, sir.

Q. Now, were your methods of testing given the same evidence that you tested in relation to this case have been any different, and would your conclusions have been any different had you not

been working for the Sheriff's office at that time?

A. No, sir.

Q. Now, with regard to the hair analysis, I believe you stated that the morphological, is that the word?

A. Morphological, right. It's a fancy term basically for how something looks under a microscope.

Q. You were unable to draw any conclusions?

A. That is correct.

Q. And what was the reason for that?

A. The hairs just looked to me to appear too similar, and not show enough marked differences where I could feel comfortable about making the exact call about whether foreign hairs were found or not.

Q. And this has happened before?

A. Yes, sir.

Q. However, you did find the same type blood as the suspect in the victim's pantyhose, is that correct?

A. I found type O blood, yes, sir, in the pantyhose.

Q. And that was the suspect's blood type?

A. Same type as the suspect, that is right, yes, sir.

Q. And you did find the same blood type in the jacket as the suspect's?

A. That is correct, yes, sir.

Q. And you did find the same blood type as the victim and the suspect in the shoe that you examined, is that correct?

A. That is correct, yes, sir.

MR. GREEN:

Thank you, Mr. Warren. I have no further questions.

Your Honor, at this time I would like to offer, file and introduce into evidence State's exhibit 14 consisting of the towels. State's exhibit No. 25, consisting of Mr. Warren's report. State's exhibit No. 26, consisting of the shoe that was examined and analyzed. And State's exhibit No. 17, the rape examination report by Dr. Eddington.

THE COURT:

Excuse me, that is 17?

MR. GREEN:

Yes, State's exhibit 17.

THE COURT:

That is Dr. Eddington's report.

MR. O'NEILL:

Your Honor, can I approach the Bench?

THE COURT:

Sure.

(Discussion off the record at the Bench.)

THE COURT:

Okay. Go back on the record. I'm going to allow the evidence in, State 13 and 14. State 12 was already introduced into evidence, was it not?

THE CLERK:

Yes, sir, it was.

DR. ROBERT EMMETT BARSLEY, 6027 West End Boulevard, New Orleans, Louisiana, was called as a witness, and after having first been duly sworn, was examined and testified on his oath as follows:

MR. GREEN:

Your Honor, previously when Dr. Barsely was called to testify, we stipulated that he was qualified as an expert in the field of forensic dentistry and forensic odonthology. I would like at this time to see if it is necessary to requalify the doctor.

MR. O'NEILL:

No.

THE COURT:

No, I think the objection was made not to the forensic odonthology, but to the bite mark analyzation process. But I overruled that objection. So, he can proceed.

MR. GREEN:

Thank you.

DIRECT EXAMINATION

MR. GREEN:

Q Dr. Barsley, did you do a comparison of the bite marks found on the victim, Beverly Short, and the defendant, Willie Jackson's teeth?

A. Yes, sir, I did do a comparison between the photo--

MR. O'NEILL:

Excuse me, Your Honor. Can I approach the Bench? He is back again, but he doesn't

get to repeat everything he said before.

THE COURT:

No, no, we're going--he is going to go forward with the evidence.

MR. O'NEILL:

That question has already been asked and answered at least three times. Of course, everybody knows he made the comparison. He has asked that question three times. We need to get to what he is going to testify to today.

THE COURT:

He is on his way there, go ahead, Alan.

MR. GREEN:

Thank you, Your Honor.

MR. GREEN:

Q. Dr. Barsley, I will be as brief as possible. Would you explain how that was done.

A. Yes, sir, I will try to explain some of the things I had to leave out yesterday.

Q. Is it necessary that--

A. Yes, sir, I think the slides should be on.

MR. GREEN:

Your Honor, at this time, I would request that Dr. Barsley be allowed to use what we will number as State's exhibit No. 27, which is a model, or mold that was taken.

THE COURT:

Let's let him explain it.

MR. GREEN:

And No. 28, which consists in globo of nineteen slides, or photographic slides.

MR. GREEN:

Q Now, would you, Dr. Barsely, proceed to inform the Court how this comparison and analysis was done.

A. Yes, sir, I will need the lights off when the slides are on.

(Discussion off the record.)

(At this time the slides are shown.)

THE WITNESS:

When I was approached to analyze this case, I was shown a series of photographs, one of which you saw yesterday. These are the two photographs that were most important (indicating). The bottom photograph was the same, depicts the same instance as the top photograph; however, the ruler that is in the picture, the longer ruler which is actually in the picture is not present to show there are no other marks that have been hidden, or obscured by the ruler. And as I stated yesterday, this top photograph is shown to be a one to one life size representation of the victim's back. This, of course, on the wall is much larger than the actual photograph, as an exact science.

Then I had Mr. Jackson brought to my office. And Mr. Jackson came in and, as I stated yesterday, he cooperated with us to take

impressions of his mouth, take photographs of his teeth, photograph of Mr. Jackson. Took a photograph of Mr. Jackson opening his mouth to show that he could open his mouth. I questioned Mr. Jackson about the history of the dental work. He informed me that the gold work you see on his teeth has been there for over eight years at that time. And that he had no painful teeth. He had a back tooth extracted about four or five months earlier.

And I tested all of his teeth by trying to shake them and none of them were loose, or painful to him when I did that. I also took a photograph of the front of Mr. Jackson's teeth. And I want to point out two or three teeth that are important here.

No. 1, this gold crown (indicating). This is an actual tooth, just like the other teeth, but the tooth has a gold covering placed on top of it. You will see that again later.

And these two teeth here on either side of the front teeth are not true teeth, they are false teeth attached to these gold crowns that are on either side of this (indicating). And I want you to note carefully this little jagged hole in this upper crown right here (indicating). We will come back to the importance of it later.

This also is a picture, as if I were sitting on Mr. Jackson's tongue. This picture

was taken in a mirror. And this is the back side of Mr. Jackson's upper teeth (indicating). Again, you can see this false tooth which is suspended (indicating), and you can see this other false tooth which is suspended from this tooth. Again, you can see that piece is missing in this gold crown.

This gold crown should be like all the others. He had a complete gold coverage, but over the years Mr. Jackson has bitten on this, he has worn through that. You can also see a small chip in the front tooth (indicating). This chip is not important in this case.

I was unable to obtain any good photographs of his lower teeth because his tongue was in the way. We couldn't keep that out of the way.

We then took an impression, a dental mold of Mr. Jackson's teeth. And this happens to be the lower. I have the actual mold in my hand. I think this is what you want to enter as evidence.

MR. GREEN:

Yes, Your Honor, that would be State's exhibit No. 27.

THE WITNESS:

These models were made from an--these dental models were made from alginate, or hydrocholoid, impression material that reproduces the things that are in your mouth,

teeth, tissue, gums, everything that it touches. These are poured up in the dental stone and these were now a faithful reproduction of Mr. Jackson's teeth.

MR. GREEN:

Q. By "faithful reproduction", what is meant, Doctor?

A. They are accurate.

Q. Thank you.

A. If you will notice the model, I have taken a picture from the outside bottom. It shows a few things that become important here. One of his front middle teeth has a little jagged edge there. Another one has a small jagged edge there. There is some spaces between his teeth (indicating). Spaces between this tooth and this is that gold tooth that you saw in the picture. It doesn't have any jagged edge. It is smooth across the top. It's a little bit bold, or pointed, but it is generally smooth.

Looking down on these same teeth, as if I were sitting on top of them, again this gold crown which now has reversed itself, it is now up, this is the same tooth (indicating). You can see the top biting surface of that tooth is generally smooth. The top biting surface of these other teeth have some minor aberrations.

And the two eye teeth, this one and that one (indicating), have a roughly trapezoidal

outline, roughly trapezoidal triangle. This is that same exact picture that you saw yesterday. We tried to relate those teeth on the bottom to these marks (indicating).

Now, this mark is on Miss Short's back, about mid-back. And as I said, her back bone runs right down here (indicating), just off the side of this picture, as if he was behind her and had bitten her.

Now, again this is the model taken just laid up along side of the pictures. And, of course, we did some things like measure the distance between this point and that point (indicating), and the same point on these teeth. We could see that the general curvature of the teeth was the same. And what has to be done here, this model has to be flipped over as if it were actually the jaw biting on this picture. And we also had taken--Mr. Jackson bit into a piece of styrofoam for me, and made indentations in the styrofoam that would represent his teeth. And I was able to trace the marks that these teeth would have made, in my opinion, had he bitten a piece of styrofoam. So, I can take this piece of clear plastic and use it to lay over this picture, if I have to.

I also colored in the one that is gold as a solid piece to differentiate it for you and myself because it will make a more solid mark.

We are able to slide this piece of plastic on top of that same picture again (indicating). These are still one to one, looking to see which one would have made this kind of mark.

Now, this is not exactly on top because I backed it up to show you if we slide this plastic down a few millimeters, these teeth would cover those marks. As I said yesterday, someone moved when this happened. The victim might have moved, or the biter moved so that the teeth drug, or skipped across the skin. Again, the skin is pulled taut, it's not a flabby area.

You can see moving down, these would cover spots (indicating), and the teeth that had rough parts that are represented here by the jagged front edges left stripes. And the tooth that is solid left a more diffuse bruise. And you can see these teeth hit and drug backwards (indicating).

Q. Would those stripes be the striations?

A. Yes, the stripes are the same things I called striations yesterday. I'm looking for a better word, and I haven't come across one.

Now, what I have done in a series of pictures, and again this is still done on top of the picture which we have in evidence with the model which I have in my hand. I'm going to slowly position this model until it covers up these marks. And again you can see spaces

where there are no teeth. And there is a space in the mark (indicating). And there is a space between here, space there (indicating). This is that gold tooth. Again, our same old solid. It looks rough. Diffuse bruise there (indicating). And this is the tooth that is going to cover that mark there, today.

Had we done this yesterday, and had this available, the victim's body available, or the skin available, we could do this on the video camera and show you. But at that time it was not available,

I am going to slowly advance that model with my hand on to those marks, seeing that everything stays exactly the same. The spaces remain, and the striations remain. After about two more pictures it is going to completely occlude, or cover up those marks. And that was a little dull, I didn't hit it very well (indicating). But it will completely cover up those marks.

Now, again, you will see an additional mark out here, and out here (indicating). This is where the first contact was made, when he first bit her. This is almost as if he had thrown his jaw at her. It's that kind of a bite.

Like I said yesterday, you cannot bite your arm and make these marks appear. It's much

harder impact than that.

Again, this is the one I showed a second ago. This is already covered up and I am sorry the picture is dark. And I pulled it back off. Again, under different lighting it shows that the spaces between the marks is consistent in every way with the marks on Mr. Jackson's teeth. And up in here that was left because of that cut, this one--

THE COURT:

Would you speak a little louder. We can barely hear you.

THE WITNESS:

I'm sorry. This one you can see here where the mark has faded out because the little piece is lower here (indicating), less tissue than we had in there.

We had taken a picture from the side. Again, this is still the bottom. Her head would still be up here. And I have shown if you drag this cast over a few millimeters, you can see that each of these teeth would fill exactly the marks (indicating).

And the last thing I have to show is something I cannot demonstrate in the same way. And this is what convinced me a hundred percent. There is--this is that crown I showed you, the bridge, the false tooth (indicating). This picture is taken in the mirror. You can see the

mirror (indicating). This is the tooth that was over here. So, it would be Mr. Jackson's left canine. This is the piece that is worn away. When he bites down, the lower tooth has bitten through the gold, worn a hole into the gold and has made this little depression right there (indicating).

When you look at--when you--now again, we go back. This is taken in the mirror. And this is shown so that if I could lay this--if this were a transparent picture, I could lay it exactly on top of the picture that I'm going to show you next. So, I could lay this tooth on top of every one. This tooth will show a mark on the top of this tooth and tip of this tooth, and the tip of this tooth (indicating), which I cut off out here, will show a mark.

The top of that big gold tooth fell right there. And there is a little depression in that clear area that I pointed to yesterday right there (indicating), that area where there is no gold, and that tooth is showing through was not impressed as hard, and made a spot into the skin.

On this side there are three teeth that I showed you, one, two, three. And then the second part of that last tooth hit and skidded. And this is the way that people, when they do biting, their jaws do slide across the skin like

that (indicating). That is how I did this, that was available to me.

MR. GREEN:

Q Doctor, what were your conclusions as a result of those tests?

A. My conclusion is that Mr. Jackson is the person who bit this lady.

MR. GREEN:

Thank you, would you answer Mr. O'Neill's questions.

THE WITNESS:

Sure.

CROSS EXAMINATION

MR. O'NEILL:

Q Doctor, can we turn the lights on?

THE COURT:

Do you have to ask him questions about the slides?

MR. O'NEILL:

Just one.

THE COURT:

I know, but do you--we have to turn the lights off if you want to put the slides back on.

MR. O'NEILL:

Your Honor, I hate to ask people questions when I can't see them.

THE COURT:

Go ahead.

MR. O'NEILL:

Q. Dr. Barsley, let me introduce myself. I am Phillip O'Neill.

A. Yes, sir.

Q. Dr. Barsley, have you ever spoken to this lady in the last few days?

A. I spoke to this lady about one minute ago in the hall where--one minute before I walked in the court, she happened to be in the hallway. And I was introduced to her. That is the first time I ever met her.

Q. Have you ever been told by anybody who knows anything about this case that when she was bit, she moved?

A. No, sir.

Q. If I told you that she got off the witness stand for forty-five minutes to an hour, and she said she fought bitterly, but that she never said she moved when she was bit. You would still contradict her testimony?

A. I don't believe I contradicted her testimony. I also mentioned that the biter could have moved, besides the victim. Either could have moved.

Q. Now, if I told you that I asked this lady, Miss Short, about the mouth and the lips of the man. And she never identified, or even mentioned the man who attacked her had gold teeth. That still would not change your testimony?

A. It would not change my testimony, no, sir.

Q. You are right regardless of anything, is that correct?

A. My opinion is that these teeth bit this lady.

Q. Nothing is going to persuade you--

A. No, sir, I am convinced.

Q. Not even the testimony of the witness?

A. I have never heard the witness's testimony.

Q. Let me ask you this: Since you were here last, have you ever had a chance to talk to the photographer?

A. No, sir, I did not have time today to talk to the photographer.

Q. Didn't have time?

A. I was too busy today to talk to him. I wasn't aware I was going to return, actually.

Q. When you made your slides, Doctor, you had your camera in a fixed position?

A. No, sir, I did not--I had it fixed--well, I did have my tripod in the hallway.

Q. You had it on a tripod?

A. A tripod I have in my kit.

Q. You knew what the distance between the lens and the object you were photographing were, didn't you?

A. I was aware of it. I didn't--I don't keep a record of it.

Q. And you knew what your camera speed was, didn't you?

A. It's an automatic camera, yes, sir.

Q. You knew what the lens opening was, you preset the lens opening?

A. It's an automatic camera. It sets it for me when I ask it to.

Q. Now, you knew what kind of film you were using?

A. Yes, sir, I do know that.

Q. You don't know any of those things about those photographs that you saw?

A. No, sir, because that is not important to my analysis.

Q. Not important. Okay. Now, I want to show you the photograph marked photograph 3 that has been introduced into evidence. This is a photograph that was taken by technician Waguespack.

A. Yes, sir.

Q. Okay. Now, you see the color distinction between that lady's hair and that wall (indicating)?

A. It is very blurry.

Q. Very blurry. You see the relationship of that chair behind her?

A. Yes, sir, I see that.

Q. Okay. If I told you that the detective testified that this is fifteen feet away, would you disagree with that?

A. I have no basis to disagree with it, no, sir.

Q. And you really wouldn't know how far away it was, do you?

A. No, sir, I can't tell.

Q. Because that picture doesn't tell you, does it?

A. No, sir, it doesn't.

Q. In relation to the bite marks, if I told you that the detective testified this morning that the type of film he used made the colors more colorful, the red more red, the blues more blue, and the greens more green, would you disagree with that?

A. No, sir, I wouldn't disagree with that.

Q. And if I told you that he also testified he does not know who developed these photographs?

A. I don't, either.

Q. And if I told you that some of the impressions, some of the impressions that you are referring to as bite marks are exaggerated due to the development, can you disagree with that?

A. I would disagree with that, yes, sir.

Q. Based upon what basis?

A. Based upon the fact these are all on the same plane of focus. It doesn't matter whether the chair is fifteen feet back, as you say, the floor is behind her head, therefore, there is going to be some loss of focus in that long distance. But when you are taking a specific picture in a specific area, your depth of field is limited in that area in which you are interested. And a bite mark, that area is very small and is within the depth field. And the colors, the contrast between the skin that is unmarked and the skin that is marked. It's not whether it is red, or purple, green, or blue.

Q. Let me ask you this: You stated on both occasions that you have been here that you know where the mid-line of the lady's spine is?

A. Yes, sir, because I have the photograph of the first photograph I showed, two pictures, the spine is visible in that picture. The bulge of the spine is visible in that picture.

Q. You still insist, based upon your analysis, that these were identical bite marks to the teeth that you examined?

A. I do not believe I used the word "Identical". I said these bite marks were made by Mr. Jackson--I mean the bite marks on the photographs were identical to the photographs that I handled. I really don't understand the question.

Q. I will rephrase it. Dr. Barsley, the business you are in of odonthology is a relatively new field of scientific endeavor, or discipline, isn't it?

A. In some respects it is relatively new.

Q. And that you are probably a pioneer in this field?

A. I would say more or less a second generation.

Q. But it's not your testimony that this is a precise science, is it?

A. This is a--you have to define the word "precise" for me. It is a science, say it that way.

Q. Based on principles?

A. Based on principles.

Q. And the application of those principles?

A. Yes, sir.

Q. Okay. But those principles don't give infallibility, do they?

A. No, sir, I didn't testify about infallible.

Q. Okay. I realize that, but you testified that you are not wrong?

A. I believe myself to be correct, or I wouldn't be here

as a sworn witness.

Q. Let me ask you this: Is it your testimony to the ladies and gentlemen of the jury that based upon your analysis these bite marks in this case couldn't be made by anybody else?

A. I never said that.

MR. O'NEILL:

No further questions. Thank you.

RE-DIRECT EXAMINATION

MR. GREEN:

Q Dr. Barsley, is there any doubt whatsoever in your mind as to your conclusion that Willie Jackson was the individual who bit the victim, Beverly Short?

A. There is no doubt in my mind that Willie Jackson is the individual who bit Mrs. Short.

Q Now, let me ask you this: Is this scientific process recognizable?

A. Yes, sir, it is recognizable. It has been--

Q Has it been sufficiently established?

A. I believe it has been sufficiently established. It has never been overturned in a court of law.

Q Thirdly--

A. To my knowledge.

Q Has this principle and method gained acceptance in the field to which it belongs?

A. Yes, sir, it has.

MR. GREEN:

Thank you, I have no other questions.

Your Honor, at this time I would like to offer, file and introduce into evidence State's exhibit 27, consisting of the model that was taken by Dr. Barsley of the defendant's teeth. And State's exhibit 28 in globo, which consists of the nineteen slides which have just been used.

THE COURT:

Mr. O'Neill.

MR. O'NEILL:

I don't have any objection.

THE COURT:

All right. The doctor is excused?

MR. GREEN:

Yes, thank you, Dr. Barsley.

MR. O'NEILL:

Your Honor, can I approach the Bench?

(Discussion off the record at the Bench.)

MR. GREEN:

For the record, Your Honor, I am giving Mr. O'Neill the duplicate of the model which we have introduced into evidence--this is the original. For the record, there were two originals made.

THE COURT:

Okay.

(Discussion off the record.)

MR. GREEN:

I would like to call Detective Judy Rice.