

FILMED

clerk file #1A 919-81  
Juli

1       VIRGINIA:

2       IN THE CIRCUIT COURT OF THE CITY OF

3       NORFOLK

5       COMMONWEALTH OF VIRGINIA,

6       vs.

7       WILLIE DAVIDSON,

8       Defendant.

9

10

11

12

13

14

DATE:      May 27, 1981

15

BEFORE:     The Honorable Alfred W.  
Whitehurst

17

18

19

20

APPEARANCES:

21

22

23

ROBERT C. SLAUGHTER, III,  
Assistant Commonwealth's Attorney,  
Appearing on behalf of the  
Commonwealth.

24

25

CHARLES V. BASHARA

Attorney for the Defendant.

CIRCUIT COURT

9-4-81  
L. on. Glend. ac

FILMED

1 C E R T I F I C A T E  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

COMMONWEALTH OF VIRGINIA

CITY OF NORFOLK, so wit:

I, Lois Baker McLellan, RPR, do hereby certify that the foregoing pages are a true and correct transcript of my Stenotype notes of the proceedings had at the time and place in the caption mentioned.

This 3rd day of September,

1981.

Lois Baker McLellan

Court Reporter

1 MARY JANE BURTON,

2 called as a witness, having been  
3 first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SLAUGHTER:

7 Q. State your full name and  
8 occupation, please.

9 A. Mary Jane Burton. I'm a  
10 forensic scientist.

11 MR. SLAUGHTER: Mr. Bashara has  
12 kindly agreed to stipulate she's an expert in  
13 the field of forensic science.

14 MR. BASHARA: Absolutely. I have  
15 checked her qualifications and find her so  
16 endowed.

17 THE COURT: We'll let the record  
18 so reflect.

19 BY MR. SLAUGHTER:

20 Q. Do you do examinations regarding  
21 hair identification?

22 A. Yes, sir. Hair identification

1 and comparisons.

2 Q. Could you tell us a little bit  
3 about the nature of these hair comparisons?

4 A. Well, first of all, hairs do  
5 vary from one person to another. There are  
6 individual characteristics within a hair which  
7 we view microscopically. First we would view  
8 the known sample of hair from any individuals  
9 involved to find the individual characteristics  
10 within those hairs, and then we use a special  
11 microscope, comparison microscope which is two  
12 separate microscopes joined with a bridge so I  
13 can view two hairs at one time in the same  
14 field.

15 After thoroughly familiarizing  
16 myself with each set of known hair and the  
17 characteristics in the hair, I would compare an  
18 unknown hair with each of the known samples to  
19 find out if I see any characteristics in the  
20 unknown hair represented in the known hair.  
21 Some of the individual characteristics I'm  
22 speaking about -- first, let me describe a hair.

23 A hair on the outside has a  
24 cuticle. All hair has a cuticle. This takes  
25 the form of scales. I have an illustration

1           that might help, if you would like to use it.

2           Q.     Well -- well, that's all right.

3           We don't have a jury here today. Judge, do you  
4           want to see that?

5           THE COURT: Of course, if she  
6           has it handy.

7           MR. BASHARA: It might enlighten  
8           us all.

9           THE COURT: And cuticle, what  
10          would that word mean?

11          THE WITNESS: Cuticle is a  
12          cutaneous type tissue. Like we have cuticle  
13          around our fingernails. Sometimes it's a, it's  
14          a type tissue we can look through. We mount  
15          these hairs in a medium with the same  
16          refractive index so we can look through the  
17          cuticle into the inner portion of the hair.  
18          This is what the hair looks like. The cuticle  
19          takes the form of scales. These vary in shape  
20          and size and thickness and whether there is  
21          pigmentation. Right inside the scales in this  
22          part we call the cortex are many other  
23          characteristics. If the hair has color, it has  
24          pigment granules you see represented here. On  
25          the cross section, they look like dots. On the

1           longitudinal section, they look like stripes.  
2           The shape of these, the size and their  
3           distribution across the diameter are individual  
4           characteristics that vary from one person to  
5           another.

6           In addition to the pigment  
7           granules, sometimes we see empty feeding tubes  
8           in the cortex. When your hair is growing,  
9           there are tubes that feed it and cause it to  
10          grow. These die off. We see remnants sometimes  
11          in the cortex. This is an individual  
12          characteristic whether they're present.

13          In the center is the medulla. A  
14          bunch of air sacs. The size and shapes and  
15          distribution are all individual characteristics.  
16          In this picture, the medulla looks regular and  
17          even but often we see it varies in diameter and  
18          sometimes we see pieces down the hair shaft.  
19          These are individual characteristics. All hair  
20          has these characteristics. At least hair with  
21          color. But they vary in the various ways I  
22          mentioned.

23           THE COURT: Yes, ma'am.  
24  
25



1 BY MR. SLAUGHTER:

2 Q. When you examine any two hairs,  
3 can you ever say for sure they came from the  
4 same person?

5 A. No, sir, I cannot.

6 Q. What would be the greatest  
7 degree of certainty you can arrive at in  
8 deciding whether they came from the same person?

9 A. I could say they could have  
10 originated from the same person. The reason I  
11 would never be able to say they did come from  
12 the same person, I would have to compare that  
13 unknown hair with hair from everyone else, at  
14 least within that race, and with a good  
15 statistical base and that would be an  
16 impossible task.

17 Q. In your work, do you analyze  
18 body fluids?

19 A. Yes, sir, I do.

20 Q. Could you tell us a little bit  
21 about the nature of the work you do with body  
22 fluids and the significance that analysis might  
23 have in a rape case?

24 A. First let me explain -- I'm sure  
25 you're familiar with blood typing. You may

1 know what your blood type is. It could be A, B,  
2 AB or O. If you are a secretor, you will have  
3 your same A, B, O blood group factors in all  
4 your body secretions. These would be vaginal  
5 fluid, saliva, mucous, tears, any body  
6 secretion would have these A, B, O factors if  
7 you're a secretor.

8 If you're a non-secretor, none  
9 of your body secretions would have your A, B, O  
10 factors. If you're a secretor, I can determine  
11 these factors the same as we might determine  
12 your blood type. Where we have a combination  
13 of secretions, where intercourse has taken  
14 place we may have a combination of seminal and  
15 vaginal, or seminal and saliva or any other  
16 secretion. We may have a combination of the  
17 A, B, O factors from the two people involved if  
18 they're both secretors. Or if only one is a  
19 secretor, we would determine just the one  
20 person's A, B, O factors.

21 Q. A woman's vaginal fluid, would  
22 that be the same type, the saliva and vaginal  
23 fluid?

24 A. If she's a secretor, all the  
25 secretions would have the A, B, O factors.

1           Q.     Did you receive swabs from a  
2     case where the victim is Thompson and the  
3     suspect is Davidson?

4           A.     Yes, sir. I received a PTRK kit  
5     from the victim, bed sheets, pillow cases, bed  
6     clothing, tissues used by suspect and cigarette  
7     butts. In another submission, I received a  
8     physical evidence recovery kit for the suspect,  
9     and in another submission I received additional  
10    public hairs and saliva samples from the victim.  
11    Then in an additional submission, I received  
12    saturated saliva swabs from the suspect.

13          Q.     Did you conduct any tests having  
14     to do with the physical evidence recovery kit  
15     from the victim?

16          A.     Yes.

17          Q.     First, how did you receive that?  
18     How was it packaged and whatever?

19          A.     It was in a brown manila  
20     envelope and sealed and identified.

21          Q.     What test did you perform with  
22     regard to the physical evidence recovery kit  
23     from the victim?

24          A.     Only thing contained was a towel  
25     with a comb and a bag with two pubic hairs in

1        It. This towel and comb also had many blood  
2        crusts dried on it, and in the towel I found  
3        three hair fragments all consistent with Negro  
4        hair.

5           Q.      Did you conduct any analysis on  
6        these hairs, comparisons of anything?

7           A.      Yes, I did.

8           Q.      What were those?

9           A.      I compared these three hairs  
10        with both the known pubic hairs from the victim  
11        and the known pubic hairs from the suspect and  
12        found that two of the hairs were consistent  
13        with and could have originated from the victim.  
14        The third hair was consistent with and could  
15        have originated from the pubic area of the  
16        suspect.

17           Q.      The hairs in that PERK kit from  
18        the victim was hair from the pubic combings?

19           A.      That is correct.

20           Q.      Where did you get the hair you  
21        compared this with?

22           A.      In the original PERK kit from  
23        the victim, I had two known pubic hairs in a  
24        bag and then I received an additional -- two is  
25        not enough. I like to have more variety, so I

1 received an additional pubic hair sample from  
2 the victim.

3 Q. Did you at some point receive a  
4 known hair from the suspect? Is that included  
5 in the items you listed earlier?

6 A. Yes, that is included in the  
7 PERK kit from the suspect.

8 Q. What was the result of the, I'm  
9 sorry. You said one hair consistent with pubic  
10 hair samples from the suspect.

11 MR. BASHARA: Objection. That  
12 is in the PERK kit.

13 A. From the victim. That is the  
14 combings from the victim.

15 MR. BASHARA: Combings from the  
16 victim and suspect?

17 A. No, I had no combings from the  
18 suspect. If I did, I didn't use them because  
19 it was much later when I got them. The three  
20 hairs I didn't know where they came from were  
21 in the combings taken by the doctor from the  
22 victim's pubic area. Two were consistent with  
23 the victim's own pubic hairs and one was  
24 consistent with the suspect's pubic hair.

25 MR. BASHARA: That is item one?



1  
2 Q. Did you receive swabs from a  
3 case where the victim is Thompson and the  
4 suspect is Davidson?

5 A. Yes, sir. I received a P.E.R.K.  
6 from the victim, bed sheets, pillow cases, bed  
7 clothing, tissues used by suspect and cigarette  
8 butts. In another submission, I received a  
9 physical evidence recovery kit for the suspect,  
10 and in another submission I received additional  
11 pubic hairs and saliva samples from the victim.  
12 Then in an additional submission, I received  
13 saturated saliva swabs from the suspect.

14 Q. Did you conduct any tests having  
15 to do with the physical evidence recovery kit  
16 from the victim?

17 A. Yes.

18 Q. First, how did you receive that?  
19 How was it packaged and whatever?

20 A. It was in a brown manila  
21 envelope and sealed and identified.

22 Q. What test did you perform with  
23 regard to the physical evidence recovery kit  
24 from the victim?

25 A. Only thing contained was a towel  
with a comb and a bag with two pubic hairs in

1       it. This towel and comb also had many blood  
2       crusts dried on it, and in the towel I found  
3       three hair fragments all consistent with Negro  
4       hair.

5                     Q.     Did you conduct any analysis on  
6       these hairs, comparisons of anything?

7                     A.     Yes, I did.

8                     Q.     What were those?

9                     A.     I compared these three hairs  
10      with both the known pubic hairs from the victim  
11      and the known pubic hairs from the suspect and  
12      found that two of the hairs were consistent  
13      with and could have originated from the victim.  
14      The third hair was consistent with and could  
15      have originated from the pubic area of the  
16      suspect.

17                   Q.     The hairs in that PERK kit from  
18      the victim was hair from the pubic combings?

19                   A.     That is correct.

20                   Q.     Where did you get the hair you  
21      compared this with?

22                   A.     In the original PERK kit from  
23      the victim, I had two known pubic hairs in a  
24      bag and then I received an additional -- two is  
25      not enough. I like to have more variety, so I

1 received an additional pubic hair sample from  
2 the victim.

3 Q. Did you at some point receive a  
4 known hair from the suspect? Is that included  
5 in the items you listed earlier?

6 A. Yes, that is included in the  
7 PERK kit from the suspect.

8 Q. What was the result of the, I'm  
9 sorry. You said one hair consistent with pubic  
10 hair samples from the suspect.

11 MR. BASHARA: Objection. That  
12 is in the PERK kit.

13 A. From the victim. That is the  
14 combings from the victim.

15 MR. BASHARA: Combings from the  
16 victim and suspect?

17 A. No, I had no combings from the  
18 suspect. If I did, I didn't use them because  
19 it was much later when I got them. The three  
20 hairs I didn't know where they came from were  
21 in the combings taken by the doctor from the  
22 victim's pubic area. Two were consistent with  
23 the victim's own pubic hairs and one was  
24 consistent with the suspect's pubic hair.

25 MR. BASHARA: That is item one?

1 THE WITNESS: Yes.  
2  
3

4 BY MR. SLAUGHTER:

5 Q. Can you say with a greater  
6 degree of certainty that it's consistent as to  
7 whether it came from the same person?  
8

9 A. No, sir.

10 MR. SLAUGHTER: I think we ought  
11 to mark that.

12 MR. BASHARA: Yes, sir. I think  
13 the Commonwealth attorney and defense counsel  
14 are reading the same thing and getting  
15 something different.

16 THE COURT: This would be C-1.  
17 I'll mark it C-1 and receive as such. It's the  
18 supplemental report.

19 BY MR. SLAUGHTER:

20 Q. Let's turn to something else.  
21 The two tissues. Item five. Mrs. Burton, did  
22 you conduct examinations with regard to those  
23 tissues?

24 A. Yes, I did. Initially I  
25 examined them for the presence of seminal fluid  
and identified spermatozoa in two tissues.

1 There were four tissues submitted. I found no  
2 evidence of seminal fluid in the other two.

3 Later when I received saliva samples from the  
4 victim and suspect, I determined the secretion  
5 type of the stains and the secretion type of  
6 both the victim and suspect through their  
7 saliva.

8 I found that the victim had  
9 type O secretion and that the suspect was a  
10 non-secretor, which meant that none of the  
11 blood group factors, whatever they would be,  
12 would be found in his body secretions. I  
13 identified spermatozoa on the tissues. If the  
14 tissues were used to wipe either, if they were  
15 used by say the defendant in wiping himself  
16 after any type intercourse, I would expect a  
17 combination of secretions to be present on the  
18 tissues.

19 If it were from a vaginal  
20 intercourse, I would expect vaginal secretions  
21 and seminal fluid. If it were from oral sodomy,  
22 I would expect saliva and seminal fluid. If it  
23 were from anal intercourse, I would expect anal  
24 fluid and seminal fluid or if it were from all  
25 three, there might be a combination of all four

1        secretions.

2              The only secretion I can  
3        identify with scientific certainty is seminal  
4        fluid because of the presence of spermatozoa.  
5        I can identify blood group factors agree  
6        present. In this case, I was able to determine  
7        that the secretions are type O and that they  
8        did contain seminal fluid.

9              Q.      Assume that the tissue you  
10      examined was used by the suspect to wipe his  
11      penis after having vaginal, anal and oral  
12      intercourse. Would there be fluid, were there  
13      fluids on that tissue from the woman?

14             A.      I would certainly expect there  
15      to be. From past experiences with types of  
16      evidence like this.

17             Q.      But you don't really have a test  
18      to determine for sure?

19             A.      No, sir. Except for determining  
20      the blood group factors present there.

21             Q.      Assume on the tissue was vaginal  
22      fluid from type O secretor. What would that  
23      tell you about the secretion type of the man  
24      who emitted the seminal fluid?

25             A.      If the vaginal fluid present or

1       any secretion was type O from the woman, the  
2       seminal fluid would have to be from a person  
3       with type O secretions or from a non-secretor.

4             Q.     You examined the secretions from  
5       the suspect and what type are they?

6             A.     He's a non-secretor.

7             Q.     What percentage of the men are  
8       type O?

9             A.     About 38 percent of the  
10      population would be type O secretors. About 20  
11      percent would be non-secretors. So  
12      approximately 58 percent of the male population  
13      could be included in this group.

14            Q.     Assuming that on this tissue was  
15      fluid from the woman's body and she's a type O  
16      secretor, what percentage of the male  
17      population would be eliminated in determining  
18      the identity of the man who emitted the seminal  
19      fluid you found?

20            A.     About 42 percent of the  
21      population. This is the whole population. The  
22      whole male population.

23            Q.     What is the significance of this  
24      test in this particular case?

25            A.     Well, it's a means of

1       eliminating an innocently accused person. In  
2       other words, if the defendant had type A  
3       secretions and I had identified seminal fluid  
4       in sufficient fluids to determine a secretion  
5       type, then I would assume this was not his  
6       seminal fluid. Or type B or AB. Something  
7       other than a non-secretor.

8           Q.     The seminal fluid had to be from  
9       a non-secretor or a type O?

10          A.    That is correct. I might also  
11       say one of the tissues had blood on it. I  
12       don't know if this has any significance.

13          Q.     One of the two had blood?

14          A.    One of the two on which I  
15       identified seminal fluid also had blood on it.

16           MR. SLAUGHTER: Judge, I believe  
17       that is all I have of the chemist. I ask that  
18       be introduced into evidence.

19           THE COURT: Marked C-1. So  
20       received.

21

22                   CROSS-EXAMINATION

23

24           BY MR. BASHARA:

25           Q.     Turning your attention to C-1.

1 I'm fascinated with the hair. I understand  
2 that secretion can include 58 percent of the  
3 male population, which is over half the male  
4 population in this country. But let's turn to  
5 the hair. We know from C-1, that is your report,  
6 and we have already stipulated, laid the ground  
7 work for my question to you. We, as lawyers,  
8 have stipulated to the Court that this recovery  
9 kit followed the unbroken chain of hands until  
10 it found its way to you and we see you opening  
11 the kit and investigating what is in the kit.  
12 That is item one.

13 A. That's right.

14 Q. Then we have known quantities.  
15 We know we have Negroid hair. We know we have  
16 a hair sample from the victim and hair samples  
17 from the suspect?

18 A. Right. Not in that first kit.

19 Q. Later we received it?

20 A. Right.

21 Q. We know you are provided with  
22 samples and we have stipulated to the chain of  
23 command. Then you go to item two, the alleged  
24 victim's bed sheets and you compare the hairs  
25 that were noted. None of these hairs are

1       consistent with the hair sample of the suspect.

2       We know that.

3           A.     That's correct.

4           Q.     We know that because of -- and  
5       you know, when I was young, I had a five power  
6       microscope and I used to look at hair samples  
7       and I used to think it was an oil shaft running  
8       up the center. Now I see the shafts have a lot  
9       of individual characteristics.

10          A.     Yes, sir.

11          Q.     Because of so many  
12       characteristics, the degree of probability of  
13       accuracy is increased?

14          A.     I think so.

15          Q.     The more characteristics you can  
16       find, the greater percentage of accuracy?

17          A.     That's right.

18          Q.     We see these on the bed sheet  
19       are inconsistent with the hair of the suspect?

20          A.     That is correct.

21          Q.     And the inconsistencies are  
22       easier to spot many times than the  
23       consistencies?

24          A.     Sometimes. Yes.

25          Q.     To a trained expert. Now, on

1                   item three, the pillow cases, item three here,  
2                   no examination conducted.

3                   item four, bed clothing of  
4                   victim. None of the hairs recovered from the  
5                   brown robe are consistent with the hair samples  
6                   from the suspect.

7                   A.       That's right.

8                   Q.       We find inconsistencies of these  
9                   hairs that match neither the alleged victim or  
10                  the suspect.

11                  A.       Oh, no. I didn't say that.

12                  Q.       What you are saying --

13                  A.       I'm saying they're inconsistent  
14                  with hairs from the defendant. I don't -- let  
15                  me see if my notes reflect if I compared them  
16                  with the victim's own hair. Yes, I did and  
17                  they were not the suspect but they were the  
18                  victim's hair.

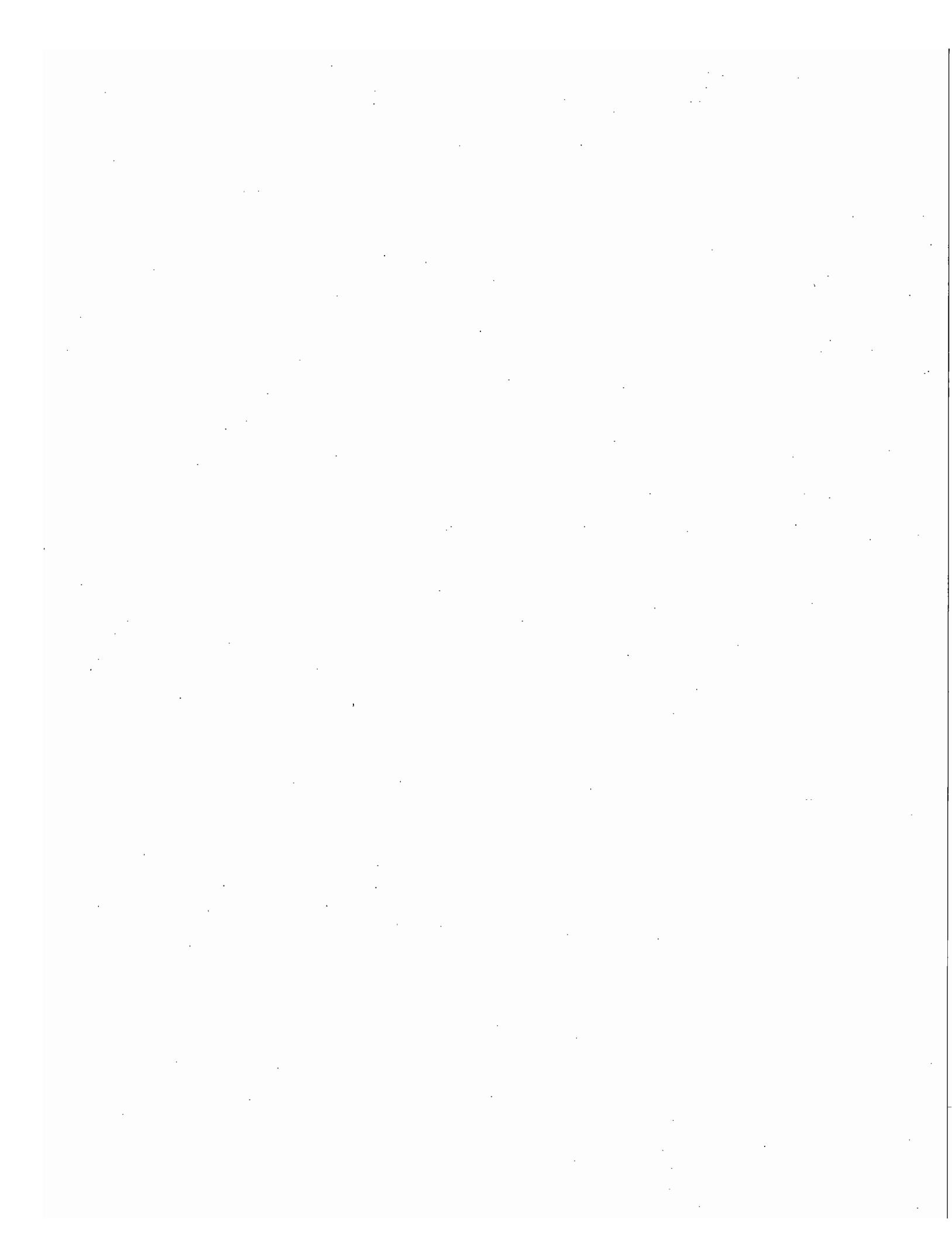
19                  Q.       They were consistent with  
20                  victim's hair?

21                  A.       That's right.

22                  Q.       Inconsistent --

23                  A.       That's right.

24                  Q.       Hair samples. How about item  
25                  two? The bed sheets?



1                   A. They were from the victim.

2                   Q. Not from the suspect?

3                   A. That's right.

4                   Q. As far as hair tests -- fine.

5                   Thank you. I have no further questions.

6                   MR. SLAUGHTER: I have nothing  
7                   further.

8                   THE COURT: Well, this witness,  
9                   can she be excused?

10                  MR. SLAUGHTER: Yes, sir.

11                  THE COURT: Thank you very much.

12                  You are excused.

13                  MR. SLAUGHTER: Judge, we rest  
14                  at this time.

15                  THE COURT: All right.

16                  MR. BASHARA: Judge, I would  
17                  make a motion to strike the Commonwealth's  
18                  evidence at this time based on its own forensic  
19                  display that they have indeed proven that the  
20                  hair samples analyzed are not the hair samples  
21                  of the suspect. And I think forensically the  
22                  Commonwealth has proved its own case against  
23                  itself as far as this defendant is concerned.

24                  MR. SLAUGHTER: Judge, we have  
25                  found in the public combings of the victim, hair

1       that is consistent with the suspect's hair.  
2       The third fragment is consistent with pubic  
3       hair samples from the suspect, item seven. So  
4       in the victim's pubic combings is a hair sample  
5       that is consistent with the defendant's hair  
6       samples.

7                    MR. BASHARA: She said she  
8       received the suspect's in a different package.  
9       That was the third fragment that she was  
10      supplied that would be proven to be his hair.

11                  MR. SLAUGHTER: The combings  
12      contained three Negroid pubic hairs. Two of  
13      these are consistent with pubic hairs from the  
14      victim. The third is consistent with pubic  
15      hairs of the suspect.

16                  MR. BASHARA: I asked the  
17      question and she said it was not received at  
18      the same time. It's in the record

19                  THE COURT: Of course as related,  
20      it is consistent with the pubic hair from  
21      suspect. She may have said she did receive some  
22      later, I believe.

23                  MR. BASHARA: That's right, Your  
24      Honor. That was the hair he provided. Not  
25      commingled.

1  
2                   MR. SLAUGHTER: Later she  
3                   received the known hair from the suspect and  
4                   she is saying the hair she received, one of the  
5                   hairs from the combings of the victim was  
6                   consistent with the known hair of the suspect.

7                   THE COURT: Though she received  
8                   it later didn't mean later after the  
9                   examination. She received it later from the  
10                  first group, but it was used in this analysis.

11                  Of course, we have her  
12                  identification. Now she does mention about the  
13                  defendant, the stocking cap and, of course, the  
14                  day before Thanksgiving, he was there. She did  
15                  not identify him, as you pointed out, to the  
16                  police when the pictures were presented. Of  
17                  course, when she saw the picture she said I  
18                  knew that I knew then. Whether she means that  
19                  is confirming it in her mind or making certain  
and so forth.

20                  Then the scientific evidence, of  
21                  course, as positive as the chemist, the  
22                  scientific people get, they say it's consistent  
23                  with and so forth and she went into detail  
24                  about the secretor, the fact that the victim,  
25                  she is a secretor and the defendant a

1 non-secretor. Which, of course, means with the  
2 person who secretes, those factors are in all  
3 their body fluids and she related what she said,  
4 of course, the type O and so forth.

5 I believe that evidence  
6 certainly has established a prima facie  
7 situation at this stage, and I'm going to  
8 overrule your motion.

9 MR. BASHARA: Call Miss Davidson  
10 to the stand.

11  
12 ROSA PRESLEY,  
13 called as a witness, having been  
14 first duly sworn, was examined and  
15 testified as follows:

16  
17 DIRECT EXAMINATION

18  
19 BY MR. BASHARA:

20 Q. What's your name, please?

21 A. My name is Rosa Brown Presley.

22 Q. Are you related in any way to  
23 the defendant?

24 A. Yes, sir. I'm his mother.

25 Q. And where -- your son has been

1 know if you actually talked to him. Isn't it  
2 normal that you type up a piece of paper and  
3 take to the person for reading or  
4 identification or something? It's possible you  
5 could have talked to somebody else and he could  
6 have talked to somebody else.

7 A. Not in a case such as this. Mr.  
8 Fly was not one of the Commonwealth witnesses.  
9 All I did was went by his house and left my  
10 card. He called me and introduced himself as  
11 Albert Fly on the telephone. He knew who I was  
12 because he called me by name and gave me that  
13 statement over the phone. I saw no need to  
14 take a written statement out there and have him  
15 sign it.

16 Q. I have no further questions.

17 MR. SLAUGHTER: No further  
18 questions. I have no further evidence.

19 THE COURT: Counsel may argue.

20 (Closing argument by Mr. Slaughter.)

21 (Closing argument by Mr. Bashara.)

22 (Final closing argument by  
23 Mr. Slaughter.)

24 THE COURT: Certainly you  
25 gentlemen have examined the testimony

1 microscopically just as the chemist, that is  
2 interesting and I remember her speaking about --  
3 Mrs. Burton, about the two-pronged microscope.

4 I think we have all seen on film, where both  
5 objects are placed under it and she's able to  
6 compare. Now true we don't, that is not a  
7 fingerprint. The fingerprint by itself in the  
8 peculiar place that is not open to the public,  
9 so to speak, has been sufficient. The aven  
10 case.

11 In this case, of course, it's  
12 true it would be fine if it were not so but  
13 it's true we can't tell if a person is telling  
14 the truth by the Adam's apple, if a person is  
15 nervous. Sometimes a person that is really  
16 nervous is the one more telling the truth if  
17 they haven't been used to being on a witness  
18 stand. They may be telling the truth more. We  
19 can't be certain positively of those types of  
20 factors.

21 The victim, there can be no  
22 question of the rape and sodomy and so forth.  
23 Her injury and the operation and so on and so  
24 forth she had to go through. The 5:15 to six  
25 a.m. when it occurred. She used the word, I

1 believe, the phrase, she said the defendant had  
2 a stocking cap, I think she used the phrase.  
3 Of course, she used one other  
4 phrase, too, that was rather significant while  
5 it's on my mind. We did hear, you gentlemen,  
6 discussed about knowing so long. Yet she did  
7 say really she had not seen the defendant  
8 recently at all for a number of years. The day  
9 before, she did see him. He did come by the  
10 day before but seemed like she had not seen the  
11 defendant as a boy, known for years of course,  
12 a number of years. Eight years or whatever.  
13 But she had not seen him recently but for the  
14 day before. And kissed her on the cheek and so  
15 forth and that discussion that was mentioned.

16 It is true and, of course,  
17 certainly I listened intently. She did not  
18 give the detective the defendant's name. She  
19 did say, We call him brother. Still she didn't  
20 identify him. The police came by with the  
21 pictures and in response she did say that  
22 phrase, that's when I knew that I knew. We  
23 asked why not tell the police.

24 There is another rather  
25 significant phrase though. She said he came

1 back that same morning and, of course, the  
2 question we have to ask, is she inventing this  
3 and it certainly would seem she perhaps more  
4 than any of us wishes to have the right person  
5 convicted. She did say he came back, the  
6 defendant, not a little bit later. It was  
7 fairly soon apparently. I came back to help  
8 you with the window. Certainly he wouldn't  
9 have known about the window and that sort of  
10 thing. And this was, it would seem before she  
11 talked to Mrs. Whittaker.

12 Of course, the testimony and  
13 pictures, Detective Hockman, he went through,  
14 and the various witnesses.

15 But without going through all  
16 the testimony, of course, Mrs. Burton, the  
17 chemist, and the expert and the microscope and  
18 the various things. These factors are very  
19 important and significant to me. First of all,  
20 the identification. She does give an  
21 identification. Yes, it is somewhat qualified.  
22 She doesn't first give the name. She says she  
23 hadn't seen him recently but for the day before.  
24 She mentioned he came back about the window, to  
25 help you fix the window and so forth. She and

1       certainly on the stand today very positive in  
2       the identification. Later the pictures and so  
3       forth. Of course, we have various items. It  
4       was mentioned about the unusually large male  
5       organ, the penis. Certainly when a person is  
6       tall, the color of hair, that alone is  
7       certainly insufficient to convict by itself.  
8       Those tissues certainly that the person used, I  
9       cannot reach a conclusion that she invented the  
10      person used the tissues to clean himself off.  
11      Those tissues tell us a couple of things.  
12      There was blood on the tissues that the person  
13      used to wipe his penis. And blood on the  
14      tissues, the seminal fluid, the type O, the  
15      type she has. Then it had the type of a  
16      non-secretor. The defendant is a non-secretor.  
17      That by itself isn't totally conclusive.  
18      Forty-two percent are of that, so that doesn't  
19      nail it down.

20    The defendant coming back. I  
21    have come back to fix the window. The pubic  
22    hair that combed out of her pubic area. Then  
23    there were two hairs, three actually, fraction  
24    of another one. When she says consistent with  
25    the defendant, that is quite a positive

1 statement because like Mr. Bashara mentioned we  
2 thought in that hair it was hollow in the  
3 middle and actually it has the well, the cortex,  
4 and then it has granules, a lot of factors,  
5 the cuticle. I wasn't sure what that was.  
6 Like the core of it. Not the core but just  
7 past the outside wrapping. Whatever that would  
8 be.

9 There are a lot of factors and  
10 when she looks at it with the two-pronged  
11 microscope and they're the same. She can't say  
12 it's the same like a fingerprint, but many  
13 factors are identical before she says they're  
14 consistent. And there are three pubic hairs,  
15 two from her area, and the reason the defendant  
16 has two prior felonies is not reason to convict  
17 him. That goes to credibility, as we know. No  
18 hairs on the sheets. It seems these are  
19 factors to consider.

20 Mr. Fly, Detective Hockman  
21 related November 26, Thanksgiving eve he spent  
22 the night with the defendant's mother, which  
23 would somewhat confirm the fact that also that  
24 would be the night the defendant is away. He  
25 stayed with his sister at Meadow Creek Road and

1 then also, these statements are opposite to the  
2 defendant has testified. The defendant said he  
3 did not kiss the cheek of the victim. And the  
4 detective mentioned shake the hand or kiss.

5 When I look at the factors, the  
6 identification she makes. Then the large male  
7 organ which seemed to trigger something to the  
8 police because they went out and right after  
9 that statement were able to pick up the  
10 defendant. Be that as it may. Then the  
11 tissues, the fact of blood and seminal fluid.  
12 Coming back to the window and the pubic hair,  
13 which is quite far reaching. And, of course,  
14 the statements that the detective related that  
15 the people said did not make to him.

16 I feel in view of all those  
17 factors, I have to reach the conclusion that  
18 the complainant is correct. That it is  
19 supported by that scientific evidence and her  
20 identification and I'm going to find that the  
21 defendant is guilty of the charges.

22 Indictment one, the burglary,  
23 I'm going to convict under the first count,  
24 count number one. It was not really  
25 established whether it was nighttime or day.

1 time. It was probably dark but it makes no  
2 difference if it was a break in. The opening of  
3 a door is a break in, the raising of a window,  
4 the cases tell us. We have that situation here.  
5 Thus count number one.

6 I'll refer the matter for the  
7 presentence report, so we can have all that  
8 before us to make a proper sentencing.

9 MR. BASHARA: Thank you, your  
10 Honor. What time?

11 THE COURT: We'll make July 14th  
12 the date for disposition at nine o'clock that  
13 day.

14 MR. SLAUGHTER: I'm sure there  
15 is a bond set and I ask it be cancelled, that  
16 he not be allowed to get out on bond.

17 THE COURT: I'll make the  
18 situation no bond pending the report.

19  
20  
21  
22  
23  
24  
25

1                   C E R T I F I C A T E  
2  
3

4                   COMMONWEALTH OF VIRGINIA

5                   CITY OF NORFOLK, to wit:

6  
7                   I, Lois Baker McLellon, RPR, do hereby  
8                   certify that the foregoing pages are a true and  
9                   correct transcript of my Stenotype notes of the  
10                  proceedings had at the time and place in the  
11                  caption mentioned.

12                  This 3<sup>rd</sup> day of September,

13                  1981.

14

15

16

17

18

Lois Baker McLellon

19                  Court Reporter  
20  
21  
22  
23  
24  
25