

1 IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON  
2 STATE OF GEORGIA  
3  
4

5 STATE OF GEORGIA )  
6 ) CRIMINAL ACTION  
7 V. ) FILE: A-78657  
8 ) CHARGE: RAPE, KIDNAPPING,  
9 ) AGGRAVATED SODOMY  
10 WILLIE OTIS WILLIAMS )

11 \*\*\*

12 TRANSCRIPT OF TRIAL GIVEN BEFORE THE HONORABLE JOHN S.  
13 LANGFORD, JR., SEPTEMBER 9-12, AND SENTENCING HEARING SEPTEMBER  
14 19, 1985, AT ATLANTA, GEORGIA.  
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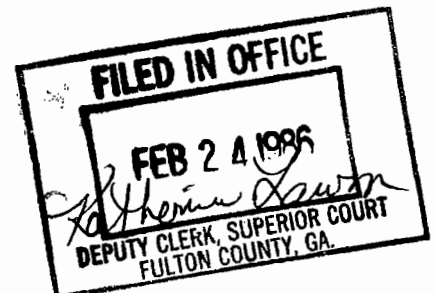
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17 APPEARANCES OF COUNSEL:

18 FOR THE STATE: FREDERICK W. TOKARS,  
19 ASSISTANT DISTRICT ATTORNEY

20 FOR THE DEFENDANT: MICHAEL R. SCHUMACHER,  
21 ATTORNEY AT LAW

22 JAMES R. WEST, RPR, CCR A-173  
23 OFFICIAL COURT REPORTER  
24 FULTON SUPERIOR COURT  
25 ATLANTA JUDICIAL CIRCUIT  
942 FULTON COUNTY COURTHOUSE  
ATLANTA, GEORGIA



1 FIRST THING YOU DO WHEN YOU DO A RAPE EXAM WAS TO COMB THE PUBIC  
2 HAIR. WHAT I FOUND AND DOCUMENTED IN THE MEDICAL RECORD WAS  
3 THERE WAS WHITE MATTED MATERIAL IN THE PUBIC HAIR. SOMETIMES  
4 ADDITIONAL SCRAPINGS CAN BE TAKEN JUST OF THAT. IF YOU SUSPECT  
5 THERE ARE SEMEN THERE, YOU CAN TAKE SCRAPINGS AND THAT'S THE  
6 PART I'M NOT SURE, WHETHER THAT WAS SENT SEPARATELY OR NOT.

7 MR. TOKARS: MAY THIS WITNESS BE EXCUSED, YOUR HONOR.

8 THE COURT: AGREEABLE TO EXCUSE THIS WITNESS?

9 MR. SCHUMACHER: NO OBJECTION, YOUR HONOR.

10 THE COURT: YOU ARE EXCUSED. YOU ARE FREE TO GO.

11 CALL YOUR NEXT WITNESS.

12 MR. TOKARS: LINDA TILMAN FROM THE STATE CRIME LAB.

13 ~~MR. SCHUMACHER: YOUR HONOR, AT THIS POINT I BELIEVE~~  
14 WE HAVE SOME MATTERS THAT WE NEED TO TAKE UP OUT OF THE  
15 PRESENCE OF THE JURY.

16 THE COURT: ALL RIGHT, SHOW THE JURY TO THE JURY ROOM,  
17 PLEASE, MR. SHERIFF.

18 (WHEREUPON, THE JURY WAS EXCUSED FROM THE COURTROOM AT  
19 3:26 P.M., AND THE FOLLOWING WAS HAD OUT OF THE PRESENCE OF  
20 THE JURY.)

21 MR. SCHUMACHER: YOUR HONOR, WE WOULD LIKE THE RECORD  
22 TO REFLECT THAT ON THE 3RD OF JULY, 1985, A MOTION FOR  
23 DISCOVERY WAS FILED BY THE DEFENDANT IN THIS CASE. ITEM  
24 FOUR OF WHICH WAS ALL RESULTS OF REPORTS AND ALL NOTES AND  
25 OTHER RECORDATION OF DATA AND METHODOLOGY AND SCIENTIFIC

1 TESTING AND EXPERIMENTS, ET CETERA, ARGUABLY RELEVANT TO  
2 THIS CASE, ET CETERA, MOTION SPEAKS FOR ITSELF, INCLUDING  
3 ANY AND ALL MATERIALS COVERED BY O.C.G.A. 17-7-210,  
4 17-7-211.

5 ON THE 15TH OF JULY, 1985, A SUPPLEMENTAL DEMAND FOR  
6 DISCOVERY WAS FILED BY THE DEFENDANT REQUESTING WITH MORE  
7 SPECIFICITY ITEMS THAT HAD BEEN SUBMITTED TO THE STATE  
8 CRIME LAB.

9 THE DEFENSE WAS SERVED ON AUGUST THE 9TH WITH A COPY  
10 OF A LAB REPORT DATED JULY THE 25TH, 1985.

11 THE COURT: AND THAT'S THE FIRST COPY YOU HAVE  
12 RECEIVED?

13 ~~MR. SCHUMACHER: YES, YOUR HONOR.~~

14 THE COURT: YOU ARE REPRESENTING TO ME YOU NEVER  
15 RECEIVED ANY SCIENTIFIC REPORT UNTIL THE 9TH?

16 MR. SCHUMACHER: EXACTLY, YES, SIR.

17 MR. TOKARS: JULY 25TH, YOU MEAN.

18 MR. SCHUMACHER: IT WAS THE DATE OF THE SECOND  
19 ARRAIGNMENT, I THOUGHT IT WAS THE 9TH.

20 MR. TOKARS: OKAY, EXCUSE ME, I'M SORRY.

21 MR. SCHUMACHER: SO IN THAT RESPECT AS TO THE CRIME  
22 LAB REPORT DATED 25 JULY, 1985, A THREE-PAGE REPORT, THE  
23 PROSECUTION HAS COMPLIED WITH THE CODE SECTION, AND WE HAVE  
24 NO OBJECTION TO THE EVIDENCE BEING RECEIVED ON THAT.

25 THE SECOND CRIME LAB REPORT DATED 4 SEPTEMBER, 1985, A

1 THREE-PAGE REPORT, WAS NOT SERVED ON THE DEFENSE UNTIL  
2 MONDAY MORNING, 9 SEPTEMBER, 1985, APPROXIMATELY ONE HOUR  
3 BEFORE WE WENT TO TRIAL. AT THAT TIME --

4 THE COURT: AIN'T NO WAY THAT CAN BE SO BECAUSE I  
5 DIDN'T PUT YOU ON TRIAL UNTIL AFTER LUNCH.

6 MR. SCHUMACHER: I'M SORRY. WELL, LET THE RECORD  
7 REFLECT, THEN, IT WAS THREE OR FOUR HOURS BEFORE THE TRIAL  
8 GOT UNDERWAY.

9 AT THAT POINT THE DEFENDANT ASKED THE COURT TO CARRY  
10 THE CASE OVER TO TUESDAY MORNING.

11 THE COURT: NO, SIR. 9:00 O'CLOCK, AT THE CALL OF THE  
12 CALENDAR, YOU ASKED FOR THE CASE TO BE CARRIED OVER TO SOME  
13 ~~OTHER TIME. AT THE CALL OF THE CALENDAR AT 9:00 O'CLOCK~~  
14 YOU SAID YOU WOULD HAVE TO HAVE A CONTINUANCE.

15 MR. SCHUMACHER: NO, SIR. I REQUESTED THAT THE CASE  
16 BE CARRIED OVER UNTIL 9:00 O'CLOCK TUESDAY MORNING.

17 THE COURT: THAT'S RIGHT, AND THAT WAS AT 9:00 O'CLOCK  
18 ON MONDAY MORNING.

19 MR. SCHUMACHER: OKAY.

20 THE COURT, AT THAT POINT INFORMED ME THAT IN ORDER TO  
21 GET THE CASE CARRIED OVER UNTIL TUESDAY, I WOULD HAVE TO  
22 WAIVE MY DEMAND FOR TRIAL.

23 THE COURT: NO, SIR, I DIDN'T SAY THAT. I ASKED IF  
24 YOU HAD A MOTION FOR SPEEDY TRIAL ON FILE.

25 MR. SCHUMACHER: YES, SIR.

1 THE COURT: AND YOU SAID YOU DID. AND I ASKED IF YOU  
2 WERE WITHDRAWING YOUR MOTION FOR SPEEDY TRIAL AND YOU SAID  
3 YOU WERE NOT, AND I TOOK THAT IN CONSIDERATION ON -- IN THE  
4 REQUEST FOR A CONTINUANCE, AND THAT WAS ONE OF THE FACTORS  
5 CONSIDERED IN MAKING A CONTINUANCE. I DIDN'T CONSTRUE YOU  
6 HAD WAIVED ANYTHING.

7 MR. SCHUMACHER: UNDER O.C.G.A. 17-7-211, SUBSECTION C,  
8 FAILURE BY THE PROSECUTION TO FURNISH THE DEFENDANT WITH A  
9 COPY OF ANY WRITTEN SCIENTIFIC REPORT WHEN A PROPER AND  
10 TIMELY WRITTEN DEMAND HAS BEEN MADE BY THE DEFENDANT SHALL  
11 RESULT IN SUCH REPORT BEING EXCLUDED AND SUPPRESSED FROM  
12 EVIDENCE IN THE PROSECUTION'S CASE IN CHIEF OR IN REBUTTAL.

13 ~~THE COURT: AND WHEN DOES THAT SAY IT HAS TO BE~~  
14 PRODUCED?

15 MR. SCHUMACHER: TEN DAYS. IF THE SCIENTIFIC REPORT  
16 IS IN THE POSSESSION OF OR AVAILABLE TO THE PROSECUTING  
17 ATTORNEY, HE MUST COMPLY WITH THIS CODE SECTION AT LEAST  
18 TEN DAYS PRIOR TO THE TRIAL OF THE CASE.

19 THE COURT: ALL RIGHT, SIR, AND YOU ARE MAKING A  
20 SHOWING ON THAT.

21 MR. SCHUMACHER: YOUR HONOR, IF I'M WRONG, HERE, THE  
22 DISTRICT ATTORNEY MAY CORRECT ME. I CONTACTED HIS OFFICE  
23 THE DAY AFTER LABOR DAY, WHICH I BELIEVE WAS THE 3RD OF  
24 SEPTEMBER, AND MR. TOKARS WAS NOT IN THE OFFICE. I  
25 CONTACTED HIS OFFICE ON THE 4TH OF SEPTEMBER AND WAS UNABLE

1 TO MAKE CONTACT WITH HIM AT THAT POINT. THE UPSHOT OF IT  
2 IS, YOUR HONOR, I WAS NOT SERVED WITH THE LAB REPORT UNTIL  
3 THE MORNING OF THE TRIAL, THE 9TH, AND WE BELIEVE THE CODE  
4 SECTION HAS NOT BEEN COMPLIED WITH.

5 THE COURT: I WANT TO MAKE SURE I UNDERSTAND YOU, NOW.  
6 YOU SAID YOU HAVE BEEN SUPPLIED WITH A COPY OF SCIENTIFIC  
7 REPORT DATED JULY SOMETHING?

8 MR. SCHUMACHER: I WAS SERVED WITH A COPY OF A LAB  
9 REPORT DATED JULY THE 25TH.

10 THE COURT: OKAY, SO YOU HAVE RECEIVED A COPY OF  
11 A SCIENTIFIC REPORT, BUT THERE WAS SOME LATER REPORT YOU  
12 HAVE NOT RECEIVED?

13 ~~MR. SCHUMACHER: THAT I DIDN'T RECEIVE UNTIL YESTERDAY~~  
14 MORNING. I WASN'T SERVED WITH IT UNTIL THE 9TH OF  
15 SEPTEMBER.

16 THE COURT: AND YOU ARE NOW GOING TO PROCEED TO SHOW  
17 THAT SUCH REPORTS AS YOU HAVE ONLY RECEIVED YESTERDAY WERE  
18 AVAILABLE TO THE DISTRICT ATTORNEY TEN DAYS PRIOR TO THE  
19 TRIAL OF THE CASE?

20 MR. SCHUMACHER: WELL, NO, SIR. IT'S DATED SEPTEMBER  
21 THE 4TH. IT SHOWS ON ITS FACE IT WASN'T AVAILABLE TO HIM  
22 TEN DAYS PRIOR TO TRIAL, BUT IT CERTAINLY WAS AVAILABLE TO  
23 HIM ON THE 4TH OF SEPTEMBER AND HE WAITED UNTIL THE 9TH OF  
24 SEPTEMBER TO SERVE ME.

25 THE COURT: I DON'T KNOW WHETHER IT WAS OR NOT. ARE

1           YOU GOING TO SHOW THAT?

2           MR. SCHUMACHER: I STATE IT IN MY PLACE, YOUR HONOR, I  
3           WASN'T SERVED UNTIL THE 9TH OF SEPTEMBER.

4           THE COURT: YEAH, BUT YOU HAVEN'T MADE ANY SHOWING AS  
5           TO WHEN IT WAS AVAILABLE. YOU HAVE GOT A WITNESS ON THE  
6           STAND, HERE, YOU CAN DO THAT.

7           MR. SCHUMACHER: WELL, THE REPORT ITSELF, YOUR HONOR,  
8           SHOWS SEPTEMBER THE 4TH THAT IT WAS DATED.

9           THE COURT: I DON'T KNOW WHAT THAT MEANS.

10          MR. TOKARS: JUST FOR THE RECORD, YOUR HONOR, I WOULD  
11          LIKE TO SAY THAT THE STATE HAS HAD A PROBLEM AT TIMES  
12          GETTING REPORTS FROM THE CRIME LAB, ONLY BECAUSE --

13          ~~THE COURT: I AIN'T TALKING ABOUT TIMES, WE'RE TALKING~~  
14          ABOUT THIS CASE, THIS REPORT. THAT'S ALL WE'RE TALKING  
15          ABOUT.

16          MR. TOKARS: I'M GETTING DOWN TO THAT, YOUR HONOR.

17          THE COURT: OKAY. I AIN'T GOING TO RULE ON OTHER  
18          THINGS, I'M GOING TO RULE ON THIS AND NO NEED IN TALKING  
19          ABOUT USUAL THINGS OR HAVING HAD PROBLEMS IN THE PAST OR  
20          THIS SORT OF THING. YOU GOT TO GET IT DOWN ON THIS CASE.

21          MR. TOKARS: THAT'S CORRECT, YOUR HONOR.

22          THE COURT: I DON'T WANT TO MISLEAD YOU ABOUT IT.

23          MR. TOKARS: IN THIS CASE THE STATE HAS MADE EVERY  
24          SINGLE ATTEMPT TO GIVE THE DEFENSE COUNSEL ANY INFORMATION  
25          IT HAD CONCERNING ANY CRIME LAB REPORTS, AND WHENEVER THAT

1 CRIME LAB REPORT WAS AVAILABLE TO US WE GOT IT TO THE  
2 DEFENSE COUNSEL WITHIN 24 HOURS, OR AT LEAST MADE IT  
3 AVAILABLE TO HIM. IN THIS CASE SPECIFICALLY, THE CRIME LAB  
4 REPORT THAT WE ARE REFERRING TO, THE ONE THAT'S DATED JULY  
5 25TH, 1985, THAT WAS GIVEN TO DEFENSE COUNSEL AS SOON AS I  
6 RECEIVED THAT REPORT MYSELF, A COPY OF THAT. SO I FEEL  
7 LIKE THAT ONE SHOULD NOT --

8 THE COURT: WHEN WAS THAT? I DON'T KNOW WHAT THAT  
9 MEANS. YOU ARE STATING A CONCLUSION.

10 MR. TOKARS: OKAY, HE'S NOT OBJECTING TO THAT ONE.  
11 I'M JUST TRYING TO CLARIFY BECAUSE THERE ARE SEVERAL  
12 REPORTS AND IT IS A LITTLE CONFUSING.

13 ~~THE ONE THAT'S DATED SEPTEMBER 4TH IS THE SECOND~~  
14 CRIME LAB REPORT THAT WE DID RECEIVE, AND I CAME BACK INTO  
15 MY OFFICE THE WEEKEND AFTER LABOR DAY, WHICH WAS ON A  
16 WEDNESDAY, AND CALLED TO TRY TO GET THAT REPORT. IT WAS  
17 STILL NOT YET COMPLETE AND SIGNED BY THE CRIME LAB.

18 I RECEIVED A COPY OF THAT REPORT THIS PAST FRIDAY, AND  
19 UPON RECEIVING A COPY OF THAT, EVEN BEFORE I RECEIVED IT I  
20 FOUND OUT WHAT THE RESULTS WERE, I CALLED THE DEFENSE  
21 COUNSEL, TOLD HIM WHAT THE RESULTS WERE AND TOLD HIM --  
22 I'M NOT SURE IF I TOLD HIM I HAD A COPY AVAILABLE FOR HIM  
23 BECAUSE I DON'T THINK I HAD IT IN MY HAND, BUT TOLD HIM I  
24 WOULD GET IT TO HIM AS SOON AS I DID GET A COPY. I  
25 RECEIVED A COPY ON FRIDAY SOMEWHERE AROUND 1:00 O'CLOCK.



1 I LEFT A COPY WITH THE SECRETARY IN OUR OFFICE, MADE IT  
2 AVAILABLE TO HIM BUT HE ALREADY KNEW WHAT THE RESULTS WERE  
3 AT THAT TIME.

4 I ALSO INDICATED TO HIM THAT THERE POSSIBLY WOULD HAVE  
5 BEEN A THIRD CRIME LAB REPORT THAT WE MIGHT BE USING  
6 CONCERNING FIBER EVIDENCE OR HAIR EVIDENCE, BUT I TOLD HIM  
7 IT WAS NOT THE STATE'S INTENTION TO INTRODUCE ANY OF THAT  
8 INTO EVIDENCE. SO WE DID NOT, FROM THE STATE'S POINT OF  
9 VIEW, ASK THE CRIME LAB TO GO AHEAD AND PRODUCE THAT THIRD  
10 SCIENTIFIC REPORT. AND THAT HAS TO DO WITH MR. LARRY  
11 PETERSON. TODAY -- YESTERDAY AND TODAY DEFENSE COUNSEL'S  
12 REFERENCE TO HAIR EVIDENCE PUT THE STATE ON NOTICE THAT HE  
13 ~~WAS, HE HAD OPENED THE DOOR TOWARDS THIS HAIR EVIDENCE, AND~~  
14 I INSTRUCTED OR ASKED MR. PETERSON FROM THE CRIME LAB TO GO  
15 AHEAD AND COMPLETE THE ANALYSIS AND THE REPORT. AT THAT  
16 TIME AN ANALYSIS HAD NOT EVEN BEEN ATTEMPTED ON THE HAIR.

17 SO I FEEL AS THOUGH THE TWO REPORTS THAT WE HAVE RIGHT  
18 NOW THAT DEFENSE COUNSEL HAS, I FEEL THOSE -- I FEEL WE'VE  
19 COMPLIED WITH THOSE STATUTES THAT HE'S CITED THERE BECAUSE  
20 WE GAVE THEM TO HIM AS SOON AS THEY WERE AVAILABLE, AND WE  
21 MADE HIM -- WE GAVE HIM NOTICE OF THE CONTENTS OF THE  
22 REPORTS LAST WEEK AS SOON AS THEY WERE AVAILABLE TO US.

23 THE THIRD REPORT, THE STATE'S POSITION WILL BE WHEN IT  
24 DOES COME UP THAT DEFENSE COUNSEL HAS OPENED THE DOOR TO  
25 THAT AND WE WERE NOT EVEN GOING TO USE THAT. IN VIEW OF

1 HIS QUESTIONS CONCERNING HAIRS AND FIBER THAT WERE FOUND IN  
2 THE CAR, WE'LL, AT THAT TIME, ATTEMPT TO INTRODUCE THAT;  
3 WHICH, AGAIN, THE REPORT WILL ONLY BE GIVEN TO US OR WILL  
4 BE MADE AVAILABLE TO THE DEFENSE COUNSEL AS SOON AS IT'S  
5 BEEN MADE AVAILABLE TO US.

6 THE COURT: ALL RIGHT, SIR, ANYTHING ELSE?

7 MR. SCHUMACHER: NO, NO.

8 MR. TOKARS: AND, ALSO, I JUST MAY ADD VERY BRIEFLY,  
9 YOUR HONOR, I THINK DEFENSE COUNSEL HAS OPENED THE DOOR IN  
10 TERMS OF THE BLOOD SAMPLES AND SALIVA SAMPLES, TOO, BECAUSE  
11 HE SPECIFICALLY, ON CROSS-EXAMINATION WITH THE VICTIM, MS.  
12 KYMM LOWNSBURY, ASKED HER QUESTIONS ABOUT WHETHER OR NOT  
13 ~~BLOOD AND SALIVA AND HAIR SAMPLES HAD BEEN TAKEN, AND I~~  
14 SPECIFICALLY TRIED NOT TO ASK ANY OF THOSE QUESTIONS AND  
15 DIDN'T HAVE ANY OF THOSE ON DIRECT. SO WE FEEL THE DEFENSE  
16 COUNSEL HAS OPENED THE DOOR, ALSO, TO TESTIMONY THAT WILL  
17 BE GIVEN BY MS. TILMAN.

18 THE COURT: LET THE RECORD SHOW THAT ON JUNE 21ST,  
19 1985, WILLIE OTIS WILLIAMS APPEARED BEFORE THIS COURT ON  
20 ARRAIGNMENT. COUNSEL WAS APPOINTED TO REPRESENT HIM AT HIS  
21 REQUEST. A PLEA OF GUILTY -- A PLEA OF NOT GUILTY WAS  
22 ENTERED. THE CASE WAS SET FOR TRIAL FOR JULY 8TH.

23 ON JULY 5TH, PUBLIC DEFENDER, IN BEHALF OF THIS  
24 DEFENDANT FILED HIS MOTION FOR DISCOVERY. THAT WAS FILED  
25 ON JULY 3RD, 1985, A MOTION FOR DISCOVERY WAS FILED

1 INCLUDING REQUEST FOR COPIES OF ALL SCIENTIFIC REPORTS  
2 PURSUANT TO THE GEORGIA CODE SECTION ON DISCOVERY OF SUCH  
3 ITEMS.

4 ON JULY 8TH THE CASE WAS ON THE TRIAL CALENDAR, THE  
5 PUBLIC DEFENDER MOVED FOR A CONTINUANCE. MR. SCHUMACHER  
6 LATER CAME IN DURING THAT WEEK AND STATED HE HAD BEEN HIRED  
7 TO REPRESENT THE DEFENDANT, REQUESTED A CONTINUANCE AND  
8 REQUESTED TIME TO FILE MOTIONS WHICH WAS GRANTED, MOTIONS  
9 TO BE FILED NO LATER THAN JULY 12TH. AND AT THE REQUEST OF  
10 MR. SCHUMACHER THE CASE WAS SET OVER TO A LATER TRIAL DATE,  
11 BEING JULY 22ND.

12 ON JULY 15TH MOTIONS WERE FILED BY MR. SCHUMACHER,  
13 ~~INCLUDING A DEMAND FOR COPIES OF SCIENTIFIC REPORTS~~  
14 PURSUANT TO CODE SECTION 17-7-211. ON JULY 22ND THE  
15 CASE CAME ON REGULARLY FOR TRIAL. AT THE DISTRICT  
16 ATTORNEY'S REQUEST THE CASE WAS RESET FOR AUGUST THE 5TH  
17 BECAUSE SCIENTIFIC REPORTS HAD NOT YET BEEN RECEIVED.  
18 BASED ON THE DISTRICT ATTORNEY'S INABILITY TO PROCEED, I  
19 SET A \$30,000 BOND FOR THE DEFENDANT. THE CASE WAS RESET  
20 TO AUGUST THE 5TH.

21 ON AUGUST 5TH THE DISTRICT ATTORNEY ANNOUNCED SUCH  
22 REPORTS HAD NOT YET BEEN RECEIVED AND AT THE DISTRICT  
23 ATTORNEY'S REQUEST THE TRIAL WAS RESET FOR SEPTEMBER 9TH.

24 ON SEPTEMBER 9TH THE DEFENDANT'S ATTORNEY ANNOUNCED  
25 THAT HE HAD ONLY THEN RECEIVED COPIES OF THE LATEST

1 SCIENTIFIC REPORTS AND NEEDED ADDITIONAL TIME TO BE  
2 PREPARED FOR TRIAL. THE DISTRICT ATTORNEY INSISTED ON  
3 PROCEEDING TO TRIAL IN AS MUCH AS HIS WITNESSES WERE HERE.

4 I FIND THAT THE DEFENDANT, DEFENSE IN THIS CASE, HAS,  
5 ON A TIMELY BASIS, MADE DEMAND FOR COPIES OF THE SCIENTIFIC  
6 REPORTS IN EARLY JULY OF 1985, JULY 3RD AND JULY 15TH; THAT  
7 SUCH WERE NOT PROVIDED TO THE DEFENSE ON A TIMELY BASIS AS  
8 THE STATUTE REQUIRES. THIS IS THE ONLY STATUTORY DISCOVERY  
9 REQUIRED OF THE PROSECUTION IN SUCH CASES, AND ACCORDING TO  
10 LAW IF THE PROSECUTION FAILS TO FURNISH THE DEFENDANT WITH  
11 A COPY OF SUCH REPORTS, THEN SUCH REPORTS AND THEIR  
12 CONTENTS SHALL BE SUPPRESSED FROM EVIDENCE IN THE

13 ~~PROSECUTION'S CASE IN CHIEF OR IN REBUTTAL. I SUSTAIN THE~~  
14 ORAL MOTION TO SUPPRESS THE PRESENTATION OF SUCH EVIDENCE.  
15 I FIND THAT THE PROSECUTION HAS FAILED TO SUPPLY SUCH  
16 REPORT.

17 MR. TOKARS: AT THIS POINT, YOUR HONOR, I WOULD LIKE  
18 TO PROCEED UNDER THE STATE'S ARGUMENT THAT THE DEFENSE  
19 COUNSEL HAS OPENED THE DOOR TO THIS TESTIMONY. HE'S  
20 SPECIFICALLY ASKED THE VICTIM BEFORE THE STATE BROUGHT TO  
21 THE ATTENTION OR EVEN MENTIONED IN ITS OPENING STATEMENT  
22 THE FACT THERE WERE SCIENTIFIC REPORTS THAT WERE PREPARED.  
23 HE SPECIFICALLY ASKED WHETHER THE VICTIM -- WHETHER BLOOD  
24 SAMPLES, SALIVA SAMPLES HAD BEEN TAKEN AND HE SPECIFICALLY  
25 ASKED ALL POLICE OFFICERS WHETHER OR NOT THEY GOT THOSE

1 SAME TYPE OF SAMPLES FROM THE DEFENDANT. AND HE ALSO FIRST  
2 BROUGHT UP THE FACT THAT HAIRS AND FIBERS WERE TAKEN OUT OF  
3 THE VEHICLE.

4 THE STATE'S ARGUMENT WOULD BE HERE THAT YEAH, WE  
5 INITIALLY WERE NOT EVEN GOING TO INTRODUCE ANY OF THIS  
6 EVIDENCE IN THAT WE DON'T BELIEVE IT WOULD HELP OUR CASE  
7 SPECIFICALLY, BUT BECAUSE HE'S MADE CONSTANT REFERENCES  
8 THROUGHOUT THE TRIAL, WE BELIEVE WE SHOULD BE ABLE TO  
9 INTRODUCE THIS EVIDENCE TO SHOW IN RESPONSE TO HIS  
10 ALLEGATION THAT THERE IS NOTHING THERE THAT WE HAVE TO HIDE.  
11 AND THAT'S WHY WE WOULD OFFER THIS TESTIMONY, YOUR HONOR.  
12 WE DID NOT INTEND TO EVEN USE ANY OF THIS EVIDENCE AT TRIAL,

~~13 AND I MADE DEFENSE COUNSEL AWARE OF THIS WEEKS AGO, AND HE~~  
14 PURPOSELY WENT AHEAD DURING THE TRIAL AND OPENED THE DOOR.

15 THE COURT: ANY AUTHORITY YOU HAVE FOR THAT POSITION?

16 MR. TOKARS: WELL, IF I NEED, IF I HAVE TO TAKE THE  
17 TIME TO LOOK, I WILL, BUT I THINK JUST IN GENERAL THE  
18 AUTHORITY WOULD BE THAT IF HE OPENS THE DOOR ON A TOPIC  
19 THAT MAY NOT BE CONSIDERED LEGALLY RELEVANT, HE MAKES IT  
20 RELEVANT.

21 THE COURT: IT'S NOT BEING EXCLUDED ON RELEVANCE, IT'S  
22 BEEN EXCLUDED ON STATUTORY PROVISIONS IF YOU FAIL TO  
23 PROVIDE IT WHETHER OR NOT YOU INTEND TO USE IT OR NOT, IT'S  
24 NEVER A QUESTION OF CONSIDERATION, IF YOU DON'T USE IT HE  
25 CAN USE IT. HE'S ENTITLED TO HAVE IT PRODUCED. YOU HAVE

1 NOT PRODUCED IT. IT IS ABSOLUTELY EXCLUDABLE.

2 MR. TOKARS: WELL, THEN, AT THIS POINT --

3 THE COURT: THAT IS TO THE SCIENTIFIC REPORTS OF  
4 AUGUST 9TH. THE STATE AND ITS AGENCIES HAVE BEEN TOTALLY  
5 DILATORY IN SUCH. YOU ARE NOW BOUND BY THE STATUTORY LAW  
6 THAT IT IS ABSOLUTELY EXCLUDED. YOU ARE STUCK WITH IT.  
7 YOU CAN BLAME IT ON THE CRIME LAB, YOU CAN BLAME IT ON  
8 WHOEVER YOU WANT TO. YOU CAN'T USE IT, FLAT OUT.

9 NEXT?

10 MR. TOKARS: AT THIS POINT IN TIME WE WOULD LIKE TO  
11 MAKE A MOTION TO PREVENT DEFENSE COUNSEL FROM MAKING ANY  
12 REFERENCES IN DIRECT EXAMINATION OR CROSS-EXAMINATION OR IN  
13 ~~HIS CLOSING ARGUMENT.~~

14 THE COURT: I HAVE NO PROBLEM IN OVERRULING IT. HE  
15 CAN EVEN PUT THE REPORT INTO EVIDENCE IF HE WANTS TO, AND  
16 YOU CAN'T. YOUR MOUTH IS SEALED ON IT. THAT'S THE EFFECT  
17 OF THE STATUTE. YOU CAN'T IGNORE THE STATUTE, MR. DISTRICT  
18 ATTORNEY.

19 MR. TOKARS: YOUR HONOR, I DON'T THINK WE HAVE IGNORED --

20 THE COURT: WELL, YOU HAVE AND I HOLD YOU HAVE./

21 WHAT'S NEXT?

22 NOW, THE RECORD SHOULD SHOW THERE HAS BEEN A PREVIOUS  
23 INDICTMENT; THAT THE PRESENT CASE ON TRIAL IS A  
24 REINDICTMENT OF THE EARLIER INDICTMENT, AND THE MOTIONS  
25 WERE FILED IN THE EARLIER INDICTMENT, A-78036, AND I

1           CONSTRUE THE FILING OF THOSE MOTIONS IN THAT EARLIER CASE,  
2           IDENTICAL CASE, TO BE VALID AND BINDING UPON THE DISTRICT  
3           ATTORNEY IN THE PRESENTATION OF EVIDENCE IN THIS CASE.

4           MR. TOKARS:   WELL, YOUR HONOR, AS TO THE JULY 25TH  
5           REPORT --

6           THE COURT:   I'VE RULED ON THAT, NOW, MR. --

7           MR. TOKARS:   MAY I JUST BRIEFLY, PLEASE, YOUR HONOR,  
8           NOT TO BELABOR THE POINT, BUT DEFENSE COUNSEL HAS ALREADY  
9           STATED THAT I DID, IN FACT, GIVE HIM THIS ONE REPORT.

10          THE COURT:   THAT'S CORRECT, TWELVE.

11          MR. TOKARS:   SO WE CAN USE TESTIMONY --

12          THE COURT:   THAT'S RIGHT, AND I HAVEN'T MADE ANY  
~~13          RULING EXCLUDING THAT.~~

14          MR. TOKARS:   OKAY.

15          THE COURT:   TALKING ABOUT THE INFORMATION CONTAINED IN  
16          REPORTS OF AUGUST, FIRST SUBMITTED TO DEFENSE ATTORNEY ON  
17          AUGUST 9TH ARE EXCLUDED.

18          MR. TOKARS:   WE'RE READY TO PROCEED, THEN.

19          THE COURT:   ALL RIGHT, SIR.

20          MR. TOKARS:   COULD YOU GIVE ME JUST ONE MORE MINUTE?  
21          I'M GOING TO MAKE SURE THAT I DON'T VIOLATE THE COURT'S  
22          RULING, AND I NEED JUST TWO SECONDS.

23          THE COURT:   ALL RIGHT, MR. SCHUMACHER, WHAT DO YOU  
24          CONTEND ARE THE TOPICS? I DON'T HAVE EITHER ONE OF THE  
25          REPORTS. WHAT DO YOU CONTEND ARE THE TOPICS OF THE

1 EVIDENCE ADDRESSED IN THE AUGUST 4TH REPORT WHICH YOU SAY  
2 YOU RECEIVED FOR THE FIRST TIME ON AUGUST 9TH YOU SAY THERE  
3 CANNOT BE ANY PROSECUTION EVIDENCE?

4 MR. SCHUMACHER: YOUR HONOR, I BELIEVE THAT THE REPORT  
5 DATED JULY THE 25TH, 1985 --

6 THE COURT: NOW, HOW COME YOU WANT TO CHANGE THAT? I  
7 ASKED YOU A SPECIFIC QUESTION ABOUT A SPECIFIC REPORT.

8 MR. SCHUMACHER: YES, SIR.

9 THE COURT: I'M ASKING YOU TO TELL ME WHAT IS  
10 INCLUDED UNDER THE RULING I JUST MADE BECAUSE OF THE  
11 UNTIMELINESS OF THE REPORT. DEAL WITH THE AUGUST REPORT,  
12 WHATEVER REPORT IT IS YOU ONLY RECEIVED YESTERDAY, WHICH I  
13 ~~UNDERSTOOD YOU TO SAY WAS THE AUGUST 4TH DATE.~~

14 MR. SCHUMACHER: OKAY. THE RESULTS ON ITEM 5.

15 THE COURT: I DON'T KNOW WHAT ITEM 5 IS. TELL ME WHAT  
16 ITEM 5 IS.

17 MR. SCHUMACHER: WHICH IS A GLASS TEST TUBE SEALED  
18 WITH GRAY RUBBER STOPPER LABELED WILLIE OTIS WILLIAMS,  
19 CONTAINING BLOOD.

20 THE COURT: ALL RIGHT, BLOOD SAMPLE OF MR. WILLIAMS.

21 MR. SCHUMACHER: BLOOD TEST IS POSITIVE FOR THE  
22 FOLLOWING SEROLOGICAL CHARACTERISTICS: INTERNATIONAL BLOOD  
23 GROUP A.

24 THE COURT: IS THAT SOMETHING DIFFERENT? IS BLOOD  
25 GROUP A, INTERNATIONAL CLASSIFICATION, DIFFERENT FROM THE



1 VILE OF BLOOD SAMPLE OF MR. WILLIAMS?

2 MR. SCHUMACHER: NO. THE RULINGS WERE THAT THE BLOOD  
3 SAMPLE SHOWED MR. WILLIAMS TO HAVE BLOOD TYPE A.

4 THE COURT: I'M NOT DOING A VERY GOOD JOB. WILL YOU  
5 TELL ME NOW WHAT ITEMS ARE EXCLUDABLE FROM EVIDENCE UNDER  
6 THE RULINGS I HAVE JUST MADE AS YOU UNDERSTAND IT TO BE.

7 MR. SCHUMACHER: ANYTHING IN THE LAB REPORT OF 4  
8 SEPTEMBER, 1985.

9 THE COURT: THAT'S WHAT I'M ASKING. I DO NOT HAVE ONE.  
10 NO ONE HAS MADE A COPY OF IT AN EXHIBIT IN THIS CASE. I  
11 HAVE NO EARTHLY IDEA WHAT YOU ARE TALKING ABOUT. TELL US,  
12 FOR THE RECORD -- EITHER TELL US FOR THE RECORD OR PUT IT  
13 ~~AS AN EXHIBIT INTO EVIDENCE. OTHERWISE NO APPELLATE COURT~~  
14 IN THE COUNTRY IS EVER GOING TO KNOW WHAT THE RULING WAS OR  
15 WHAT YOUR OBJECTION WAS OR WHAT THE RULING WAS.

16 MR. SCHUMACHER: YES, SIR.

17 THE COURT: SOME WAY YOU HAVE GOT TO GET IT IN THE  
18 RECORD. THAT'S WHAT I'M SUGGESTING TO YOU, EITHER TELL  
19 ME OUT LOUD SO THE COURT REPORTER CAN WRITE IT DOWN OR PUT  
20 YOUR COPY AS AN EXHIBIT THAT THESE ARE THINGS YOU SAY THIS  
21 IS WHAT THE COURT HAS JUST RULED OUT.

22 I HATE TO APPEAR SO IGNORANT. YOU JUST HAVE NEVER  
23 TOLD ME WHAT IT IS AND NEVER PROVIDED ME WITH A COPY AND  
24 NEVER MADE A COPY AN EXHIBIT, SO I'M PERFECTING THE RECORD  
25 FOR YOU, PLEASE.

1 MR. SCHUMACHER: THE SHOWING THAT WILLIE WILLIAMS'  
2 BLOOD TYPE IS A. THE SHOWING THAT WILLIE WILLIAMS' SALIVA  
3 SAMPLE INDICATES HIM TO BE A NON-SECRETOR. THE SAMPLE  
4 SHOWING KYMM LOWNSBURY'S BLOOD TO BE TYPE O, AND THAT SHE  
5 IS OF SECRETOR STATUS. THE FACT THAT MICROSCOPIC  
6 EXAMINATION OF SMEARS RECEIVED IN THE RAPE KIT REVEALS  
7 PRESENCE OF SPERM. THE EXAMINATION OF SWABS CONTAINED IN  
8 THE RAPE KIT REVEALS THE PRESENCE OF SEMINAL FLUID. THE  
9 EXAMINATION OF SWABS REVEALING THE PRESENCE OF BLOOD TYPE O.  
10 AND I BELIEVE THAT'S THE SUBSTANCE OF THE REPORT.

11 THE COURT: ALL RIGHT, DO YOU TAKE ANY DIFFERENT  
12 POSITION?

13 ~~MR. TOKARS: MOST SURELY, YOUR HONOR. DEFENSE COUNSEL~~  
14 ALREADY ADMITTED BEFORE WHEN HE GAVE HIS STATEMENT TO THE  
15 COURT THAT THE JULY 25TH CRIME LAB REPORT WAS WELL RECEIVED,  
16 WAS RECEIVED WELL BEFORE THE TEN DAY LIMIT. AND IN THERE  
17 EVERYTHING THAT HE JUST REFERRED TO WAS, IN FACT, SUBMITTED  
18 TO THE STATE CRIME LAB, AND THERE WERE SOME RESULTS, IF YOU  
19 WILL. THEY EXAMINED AND FOUND SPERMATOZOA, THEY FOUND THE  
20 BLOOD TYPE OF THE DEFENDANT. ADMITTEDLY THERE ISN'T ANY  
21 BLOOD SAMPLE FROM THE VICTIM AS INDICATED IN THAT CRIME LAB  
22 REPORT, HOWEVER, WE DID FIND SPERMATOZOA AND WE DID ALSO,  
23 IN FACT, FIND THE BLOOD GROUPING OF THE DEFENDANT. AND I  
24 WILL, YOU KNOW, WITHHOLD ANY TESTIMONY AS TO ANYTHING ELSE  
25 AT THIS TIME, I GUESS, IN ACCORDANCE WITH THE COURT'S

1 RULING.

2 THE COURT: YOU HAVE MISSTATED THE REPORT CONTENTS,  
3 HAVEN'T YOU, MR. SCHUMACHER?

4 MR. SCHUMACHER: YOUR HONOR, THESE THINGS ARE HALFWAY  
5 GREEK TO ME. IF I'VE MISSTATED IT, IT'S COMPLETELY  
6 UNINTENTIONAL.

7 THE COURT: CAN YOU READ?

8 MR. SCHUMACHER: YES, SIR.

9 THE COURT: YOU CAN'T READ THE PART IN THE SEPTEMBER --  
10 THE JULY 25TH REPORT THAT SAYS "MICROSCOPIC EXAMINATION OF  
11 THE SMEARS REVEALS THE PRESENCE OF SPERMATOZOA"?

12 MR. SCHUMACHER: I HADN'T COMPARED THE TWO. THAT'S MY  
13 FAULT.

14 THE COURT: I WANT THAT IN THE RECORD, PLEASE.  
15 COUNSEL SAYS HE HAS NOT COMPARED THE TWO REPORTS, IS NOT  
16 AWARE OF WHAT'S DIFFERENT.

17 MR. SCHUMACHER: HERE AGAIN, YOUR HONOR, THIS GOES TO  
18 THE GIST OF OUR ARGUMENT, THE REQUIREMENT OF THE STATUTE.

19 THE COURT: I'VE GRANTED YOUR MOTION, NOW I'M ASKING  
20 YOU WHAT THE RULING IS THAT YOU INVOKED AS TO WHAT IS  
21 EXCLUDED.

22 MR. SCHUMACHER: IF YOUR HONOR WILL GIVE ME A MINUTE,  
23 I'LL COMPARE THE TWO.

24 THE COURT: ALL RIGHT.

25 DO YOU HAVE YOUR COPY OF THE AUGUST 4TH REPORT, MR.

1 TOKARS?

2 MR. TOKARS: I'VE GOT ONE. I'VE GOT SEPTEMBER 4TH.

3 THE COURT: SEPTEMBER 4TH, THAT'S WHAT I MEAN.

4 MR. TOKARS: YES, SIR, I'VE GOT THAT.

5 THE COURT: ALL RIGHT, I'M GOING TO DIRECT MY LAW  
6 CLERK TO GO AND MAKE PHOTO COPIES OF THESE TWO REPORTS AND  
7 I'M GOING TO DIRECT THEY BE MADE PART OF THE RECORD  
8 IN THE CASE. YOU TWO LAWYERS BOTH ARE VERY CAREFULLY  
9 AVOIDING GETTING THE THING CRYSTAL CLEAR, AND I'M GOING TO  
10 STRAIGHTEN IT OUT. EITHER YOU GO MAKE PHOTO COPIES, MR.  
11 TOKARS, OR GIVE THEM TO MR. LEWIS SO HE CAN MAKE PHOTO  
12 COPIES.

~~13 MR. TOKARS: THAT'S FINE.~~

14 I'LL SAY ONE THING THAT MAY HELP CLEAR THINGS UP.  
15 FIRST IS THE SEPTEMBER 4TH REPORT IS INCLUSIVE AND DOES  
16 INCLUDE THE SAME THINGS AS THE JULY 25TH REPORT, BUT IT  
17 ALSO INCLUDES ADDITIONAL --

18 THE COURT: WE'RE GOING TO FIND OUT.

19 GET TWO COPIES MADE FOR EACH ONE.

20 MR. TOKARS: IT HAS ADDITIONAL INFORMATION.

21 THE COURT: THAT'S WHY WE'RE CONFUSED, BECAUSE I'VE  
22 BEEN GOING PURELY ON WHAT THE LAWYERS SAY IT SAYS, AND  
23 LAWYERS NEVER TELL ME -- WHEN THEY SAY WHAT IT SAYS, THEY  
24 NEVER SAY PRECISELY THE WORDING OF THE THING, UNLESS I MAKE  
25 THEM READ IT, AND I HAVEN'T GOTTEN THAT DONE BY EITHER ONE

1 OF YOU, AND THAT'S MY MISTAKE. I TAKE FULL RESPONSIBILITY  
2 FOR IT.

3 ALL RIGHT, BACK ON THE RECORD, PLEASE.

4 I HAVE DEPOSITED WITH THE COURT REPORTER COPIES OF TWO  
5 DOCUMENTS, ONE BEING COURT EXHIBIT NUMBER 1 - WHICH IS WHAT  
6 DATE, MR. WEST - REPORT OF JULY 25TH, WHICH IS A COPY OF  
7 GEORGIA BUREAU OF INVESTIGATION DIVISION OF FORENSIC  
8 SCIENCES OFFICIAL REPORT, CASE NUMBER 85-08068, INDICATED  
9 JULY 25TH, 1985; AND COURT EXHIBIT NUMBER 2 WHICH IS  
10 ANOTHER OFFICIAL REPORT UNDER THE SAME FILE NUMBER BUT IT  
11 IS DATED SEPTEMBER 4TH, 1985.

12 I NOW HAVE COPIES BEFORE ME, HERETOFORE ALL THE  
13 ~~DEALINGS CONCERNING THIS MOTION AND OBJECTION HAVE BEEN~~  
14 WITHOUT THE TRIAL JUDGE HAVING BENEFIT OF THE REPORT.  
15 I FIND THE FIRST PAGE OF EACH OF THOSE REPORTS TO BE  
16 IDENTICAL.

17 ON THE SECOND PAGE OF EACH REPORT, I FIND THAT IN THE  
18 SEPTEMBER 4TH REPORT THERE IS INDICATION OF RECEIPT ON  
19 AUGUST 8TH, 1985, OF ITEMS 9 AND 10 SUBMITTED TO THE CRIME  
20 LAB. THOSE ITEMS ARE NOT REFERRED TO IN THE EARLIER REPORT  
21 OF JULY 25TH, 1985. I FIND UNDER "SERVICE REQUESTED" THE  
22 BLOOD TYPE THAT THE FIRST PARAGRAPH STATED IN THE RESULTS  
23 IS IDENTICAL TO INFORMATION STATED IN THE JULY 25TH, 1985,  
24 REPORT, BUT THE SUBSEQUENT TWO PARAGRAPHS PERTAINING TO  
25 EXAMINATION OF SALIVA SAMPLE OF ITEM 6 AND THE BLOOD SAMPLE,

ITEM 9, BOTH WERE NOT REFERRED TO IN THE ORIGINAL JULY 25TH, 1985, REPORT AND, THEREFORE, WOULD BE EXCLUDED FROM TESTIMONY PRESENTED BY THE STATE AS NOT COMPLYING WITH THE DISCOVERY RULE OF SCIENTIFIC REPORTS OF THE GEORGIA CRIMINAL PROCEDURE.

GOING TO CRIMINALISTICS TESTING AND REPORT, THERE APPEARS TO BE THE SAME INFORMATION AS STATED IN THE PREVIOUS JULY 25TH, 1985, REPORT, WHICH IS ESSENTIALLY SAYING WE HAVEN'T PERFORMED ANY CRIMINALISTIC SERVICES ON THIS.

IN THE THIRD SECTION OF THE REPORT DEALING WITH SEMINAL FLUID ANALYSIS, THE CONTENTS OF THE REPORT ON ~~SEMINAL FLUID ANALYSIS APPEAR TO BE THE SAME WITH ONE~~ EXCEPTION, AND THAT BEING THE SECOND PARAGRAPH REPORTING ON EXAMINATION OF SWABS, "ITEM 1A REVEALS PRESENCE OF SEMINAL FLUID. SPERMATAZOA ARE IDENTIFIED MICROSCOPICALLY." THAT PARAGRAPH IS NOT STATED IN THE EARLIER REPORT OF JULY 25TH AND IS EXCLUDABLE UNDER THE RULING OF THE COURT HERE MADE.

AND UNDER THE LAST SECTION OF THE REPORT, SEMINAL FLUID TYPING, THE REPORT OF SEPTEMBER 4TH CONTAINS INFORMATION WHICH WAS NOT PREVIOUSLY REPORTED IN THE REPORT OF JULY 25TH AND IS, THEREFORE, EXCLUDABLE.

ALL RIGHT, THAT'S AS SPECIFIC AS I'M ABLE TO MAKE THAT. LET THE RECORD SHOW THAT THIS IS NOT AS BROAD EXCLUDABLE AS MR. SCHUMACHER HAD STATED ORALLY THAT IT WAS, BECAUSE THERE

1 IS A CONSIDERABLE AMOUNT OF THE INFORMATION HE STATED IN  
2 HIS ORAL CONTENTION THAT IS ADMISSIBLE BECAUSE IT WAS  
3 COVERED IN THE EARLIER REPORT OF JULY 25TH, 1985, AND IT'S,  
4 THEREFORE, NOT EXCLUDABLE ON THE BASIS OF THE RULING HERE.

5 MR. TOKARS: MAY I BRIEFLY CONFER WITH HER JUST TO  
6 MAKE SURE WE DON'T OVERSTEP OUR --

7 THE COURT: YES, SIR.

8 MR. SCHUMACHER: I APOLOGIZE TO THE COURT IF I  
9 MISSTATED. HAVING SAT DOWN AND GONE OVER IT, I FIND THAT  
10 THE COURT'S RULING IS IN ACCORDANCE WITH MY INTERPRETATION  
11 OF THESE TWO REPORTS.

12 MR. TOKARS: WE'RE READY, YOUR HONOR.

13 ~~THE COURT: ALL RIGHT. BRING THE JURY IN, MR. SHERIFF.~~

14 (WHEREUPON, THE JURY WAS RETURNED TO THE COURTROOM AT  
15 4:08 P.M., AND THE FOLLOWING WAS HAD IN THE PRESENCE OF THE  
16 JURY.)

17 THE COURT: CALL YOUR NEXT WITNESS.

18 MR. TOKARS: MS. LINDA TILMAN FROM THE STATE CRIME LAB.

19 LINDA TILMAN,

20 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. TOKARS:

23 Q. WOULD YOU PLEASE STATE YOUR NAME?

24 A. LINDA B. TILMAN.

25 Q. AND BY WHOM ARE YOU EMPLOYED?

1           A.    I'M EMPLOYED BY THE STATE CRIME LABORATORY IN ATLANTA.

2           Q.    AND WHAT ARE YOUR DUTIES THERE AS A STATE CRIME LAB  
3 EMPLOYEE?

4           A.    I'M A FORENSIC SEROLOGIST.

5           Q.    OKAY.  NOW, IN TERMS OF QUALIFYING YOU AS AN EXPERT  
6 WITNESS, PLEASE GIVE THE JURORS YOUR BACKGROUND EDUCATION AND  
7 EXPERIENCE AS RELATE TO SEROLOGISTS AND INVESTIGATION OF RAPE  
8 CASES.

9           A.    I RECEIVED A MASTERS DEGREE IN BIOLOGY FROM CONVERSE  
10 COLLEGE IN SPARTANBURG, SOUTH CAROLINA.  I THEN RECEIVED A  
11 MASTERS DEGREE IN BIOLOGY FROM EMORY UNIVERSITY HERE IN ATLANTA.

12           I HAVE WORKED AS A SEROLOGIST AT THE STATE CRIME LABORATORY  
13 ~~FOR APPROXIMATELY ELEVEN YEARS.  I'VE TRAINED UNDER THE~~  
14 DIRECTION OF MRS. ELIZABETH QUARRELS AT THE CRIME LABORATORY,  
15 HERE.  I'VE ALSO UNDERGONE ON THE JOB TRAINING AT THE ARMY'S  
16 CRIMINAL INVESTIGATION DIVISION LABORATORY FORMERLY AT FORT  
17 GORDON.  IT'S NOW AT FORT GILLEM.  FOR THE ENTIRE TIME OF MY  
18 EMPLOYMENT AS SEROLOGIST, I'VE SPENT IN EXAMINING PREDOMINANTLY  
19 BLOOD AND SALIVA SAMPLES, AND SEMINAL FLUID SAMPLES, ALSO.  
20 THESE WOULD BE EITHER IN THE FORM OF LIQUID SAMPLES OR IN FORM  
21 OF DRIED STAINS.  WE EXAMINE THESE BODY FLUIDS FOR THE PURPOSES  
22 OF IDENTIFYING WHAT THEY ARE AND CHARACTERIZING AND  
23 INDIVIDUALIZING THEM WHENEVER OR WHEREVER IT'S APPROPRIATE.

24           MR. TOKARS:  OKAY.

25           YOUR HONOR, I WOULD LIKE TO MOVE THAT HER TESTIMONY BE



1 ACCEPTED AS AN EXPERT.

2 THE COURT: DO YOU WANT TO VOIR DIRE THE WITNESS IN  
3 REGARD TO HER QUALIFICATIONS TO TESTIFY AS AN EXPERT IN THE  
4 FIELD OF FORENSIC SEROLOGY, MR. SCHUMACHER?

5 MR. SCHUMACHER: NO, SIR, YOUR HONOR. THE DEFENSE  
6 WILL STIPULATE.

7 THE COURT: ALL RIGHT.

8 NOW, LADIES AND GENTLEMEN OF THE JURY, LET ME  
9 TELL YOU WHAT THIS IS ABOUT.

10 ORDINARILY, PERSON'S WHO TESTIFY IN TRIALS ARE LIMITED  
11 TO TESTIFYING AS TO WHAT THEY SAW OR WHAT THEY KNOW BY  
12 DIRECT KNOWLEDGE, AND NOT GENERALLY PERMITTED TO STATE  
13 ~~OPINIONS. THERE IS AN EXCEPTION TO THAT, AND THAT IS WITH~~  
14 WHAT'S CALLED "EXPERT" OR PERSONS WHO HAVE SOME TRAINING,  
15 EXPERIENCE AND KNOWLEDGE IN UNIQUE AREAS NOT GENERALLY  
16 AVAILABLE TO THE KNOWLEDGE OF OTHER PERSONS IN SOCIETY. WE  
17 LAY PERSONS MAY NOT KNOW ANYTHING ABOUT SEROLOGY AND THIS  
18 SORT OF THING, SO IN TRIALS OF VARIOUS KINDS THEY ARE  
19 PERMITTED TO BRING EXPERTS IN CERTAIN FIELDS TO TESTIFY.  
20 MEDICAL DOCTORS, FOR INSTANCE, ARE CONSIDERED TO BE EXPERTS  
21 IN MEDICINE. BUT HERE'S HOW YOU TREAT SUCH EVIDENCE  
22 PRESENTED TO YOU.

23 TESTIMONY IN TRIALS IS SOMETIMES PERMITTED BY PERSONS  
24 WHO ARE TERMED "EXPERTS". THAT IS PERSONS WHO HAVE SPECIAL  
25 KNOWLEDGE AND EXPERIENCE IN CERTAIN PROFESSIONS AND

1 SCIENCES. EXPERTS ARE SIMPLY PERMITTED TO TESTIFY AS TO  
2 THEIR OPINIONS DERIVED FROM THEIR KNOWLEDGE OF PARTICULAR  
3 MATTERS. BUT THE ULTIMATE WEIGHT WHICH IS GIVEN TO THE  
4 TESTIMONY OF EXPERT WITNESSES IS A QUESTION TO BE  
5 DETERMINED BY THE JURY. IN OTHER WORDS, THE TESTIMONY OF  
6 AN EXPERT, LIKE THAT OF ANY OTHER WITNESS, IS TO BE  
7 RECEIVED BY YOU AND GIVEN SUCH WEIGHT AS ONLY -- SUCH  
8 WEIGHT ONLY AS YOU THINK IT IS PROPERLY ENTITLED TO. YOU  
9 ARE NOT BOUND OR CONCLUDED BY THE OPINION TESTIMONY OF AN  
10 EXPERT -- OF ANY WITNESS, EXPERT OR OTHERWISE.

11 SO IT'S PRESENTED FOR YOUR ASSISTANCE AND YOU MUST  
12 EVALUATE IT IN THE SAME LIGHT AS YOU DO OTHER TESTIMONY.

13 ~~YOU MAY PROCEED.~~

14 BY MR. TOKARS:

15 Q. APPROXIMATELY HOW MANY CASES HAVE YOU WORKED ON WHERE  
16 YOU HAVE ANALYZED BLOOD AND SEMINAL FLUID AND THOSE KINDS OF  
17 THINGS?

18 A. MANY THOUSANDS. WE GET, PER SCIENTIST IN THE SEROLOGY  
19 SECTION, WE WORK AT LEAST -- OR RECEIVE AT LEAST 30 TO 40 CASES  
20 PER MONTH. THESE WOULD BE SEMINAL FLUID CASES AND BLOOD CASES.

21 Q. EXPLAIN TO THE JURORS IN GENERAL HOW YOU ARE -- HOW  
22 YOU TRY TO MATCH UP A RAPE VICTIM AND A RAPE DEFENDANT?

23 A. FIRST THING THAT WE WOULD DO WOULD BE TO EXAMINE  
24 EVIDENCE TO DETERMINE THAT THERE IS SEMINAL FLUID PRESENT.  
25 SEMINAL FLUID, OF COURSE, BEING THE FLUID THAT IS PRODUCED BY

1 THE MALE DURING SEXUAL ACTIVITY. ONCE WE HAVE ASCERTAINED THAT  
2 SEMINAL FLUID IS PRESENT, WE CAN DETERMINE THAT THERE ARE  
3 SPERMATOZOA PRESENT. THOSE ARE MALE SEX CELLS FOUND IN SEMINAL  
4 FLUID.

5 THERE IS A PROCEDURE KNOWN AS SEMINAL FLUID TYPING  
6 WHICH WE CAN PERFORM IN SOME INSTANCES. THIS INVOLVES  
7 ATTEMPTING TO DETERMINE THE BLOOD TYPE OF THE SEMINAL FLUID. BY  
8 SAYING BLOOD TYPE, I DO NOT MEAN THAT THERE IS ACTUALLY BLOOD IN  
9 THE SEMINAL FLUID. APPROXIMATELY 80 PERCENT OF THE POPULATION  
10 BELONG TO A CLASSIFICATION KNOWN AS SECRETORS. IN THIS 80  
11 PERCENT OF THE POPULATION YOU CAN DETERMINE A BLOOD GROUPING NOT  
12 ONLY FROM THEIR BLOOD BUT ALSO FROM OTHER BODY FLUIDS THAT ARE  
13 ~~SECRETED, SUCH AS SALIVA OR SEMINAL FLUID IN MEN, VAGINAL FLUID~~  
14 IN WOMEN. THE OTHER 20 PERCENT OF THE POPULATION BELONG TO THE  
15 CLASSIFICATION KNOWN AS NON-SECRETORS. THESE PEOPLE WOULD HAVE  
16 THE BLOOD GROUP SUBSTANCE PRESENT ONLY IN THEIR BLOOD, AND,  
17 THEREFORE, WOULD HAVE NO BLOOD GROUP SUBSTANCE AT ALL IN SALIVA,  
18 SEMINAL FLUID, VAGINAL FLUID. YOU WOULD GET NO BLOOD TYPE  
19 WHATSOEVER IF YOU TRIED TO TYPE SUBSTANCES OR BODY FLUIDS FROM A  
20 NON-SECRETOR.

21 SO WE CAN TAKE -- NORMALLY, SEMINAL FLUID APPEARS ON  
22 VAGINAL SWABBINGS. WE CAN TAKE THE VAGINAL SWAB, DETERMINE A  
23 BLOOD GROUPING ON THE VAGINAL SWAB, AND THEN BY DETERMINING THE  
24 BLOOD GROUP AND SECRETOR STATUS OF EACH OF THE SUBJECTS INVOLVED,  
25 WE CAN ASCERTAIN WHETHER A MALE COULD OR COULD NOT HAVE BEEN THE

1 CONTRIBUTOR OF SEMINAL FLUID FOUND IN THE VAGINAL FLUID OF A  
2 FEMALE.

3 Q. IS IT FAIR TO SAY IF A DEFENDANT WERE A NON-SECRETOR  
4 YOU COULDN'T PROVE ONE WAY OR ANOTHER WHETHER OR NOT HE WAS A  
5 RAPE DEFENDANT, THE PERPETRATOR?

6 A. YES, SIR, THAT'S CORRECT.

7 Q. NOW, I'M GOING TO ASK YOU TO STEP DOWN TO THE  
8 BLACKBOARD, HERE, IF YOU WILL, AND I'M GOING TO GIVE YOU A SET  
9 OF FACTS AND CIRCUMSTANCES BEING A HYPOTHETICAL FOR ILLUSTRATIVE  
10 PURPOSES, AND ASK YOU IF YOU WILL MAP OUT HOW YOU WOULD ATTEMPT  
11 TO INCLUDE OR EXCLUDE A PARTICULAR DEFENDANT.

12 THE ASSUMPTION THAT I WOULD LIKE YOU TO MAKE WOULD BE  
13 ~~THAT A PARTICULAR ALLEGED PERPETRATOR HAD TYPE A BLOOD AND THAT~~  
14 HE WAS A NON-SECRETOR.

15 A. AND HE'S NON-SECRETOR?

16 Q. THAT'S CORRECT.

17 OKAY.

18 AND THE VICTIM IN THE CASE, ASSUME THAT SHE WOULD HAVE  
19 TYPE O BLOOD, AND THAT SHE WAS A SECRETOR.

20 OKAY. IF THE VICTIM, IF THEY HAD FOUND SEMINAL FLUID  
21 IN HER VAGINA AFTER AN ALLEGED RAPE, WOULD THAT GENERALLY HAVE A  
22 TYPE OF BLOOD IN THAT, AN INDICATION --

23 A. IT COULD AND MOST LIKELY WOULD CONTAIN SOME OF THE  
24 VICTIM'S TYPE, THE TYPE O. BUT YOU WOULD NOT EXPECT TO FIND ANY  
25 OF THE TYPE A IF THIS WERE THE DONOR, BECAUSE HE IS A

1 NON-SECRETOR AND, THEREFORE, WOULD NOT HAVE ANY OF THE SUBSTANCE  
2 IN HIS SEMINAL FLUID.

3 Q. IF YOU WOULD, IN TERMS OF PERCENTAGES, ILLUSTRATE TO  
4 THE JURORS NOW, IN A HYPOTHETICAL SITUATION, YOU WOULD ATTEMPT  
5 THE NARROW IT DOWN TO A POTENTIAL GROUP OF PEOPLE WHO COULD BE  
6 THE ALLEGED PERPETRATOR?

7 A. FIRST OF ALL, THIS IS WHY WE MUST HAVE THE VICTIM'S  
8 TYPE IN ORDER TO MAKE AN INTERPRETATION. KNOWING THAT THIS  
9 VICTIM IS A SECRETOR AND THAT WE HAVE TYPE O SEMINAL FLUID, OR  
10 THAT WE HAVE TYPE O SUBSTANCE PRESENT AND THERE IS SEMINAL FLUID  
11 PRESENT, THAT MEANS THAT THE TYPE O SUBSTANCE THAT IS FOUND ON  
12 THE VAGINAL SWAB COULD HAVE COME FROM A TYPE O SECRETOR WHO

~~13 MERELY ADDED TO THE O SUBSTANCE THAT WAS FOUND IN THE VICTIM~~

14 ANYHOW. SO TYPE O SECRETORS WOULD BE APPROXIMATELY 30 PERCENT,  
15 36 PERCENT OF THE POPULATION. SINCE THE VICTIM IS AN O SECRETOR  
16 AND O SUBSTANCE WAS FOUND, ALL OF THAT COULD HAVE COME FROM THE  
17 VICTIM AND, THEREFORE, THE SEMINAL FLUID COULD HAVE BEEN PUT  
18 THERE BY A NON-SECRETOR OF ANY TYPE. BECAUSE NO MATTER WHAT THE  
19 PERSON'S BLOOD TYPE IS, THEY WOULD HAVE NO TYPE IN THEIR SEMINAL  
20 FLUID AND ONLY THE TYPE OF THE VICTIM WOULD SHOW UP.

21 NON-SECRETORS MAKE UP 20 PERCENT OF THE POPULATION. SO YOU  
22 WOULD BE UNABLE TO EXCLUDE APPROXIMATELY 56 PERCENT OF THE  
23 POPULATION OR 56 OUT OF EVERY ONE HUNDRED RANDOMLY CHOSEN MEN  
24 COULD HAVE BEEN THE DONOR OF THE SEMINAL FLUID THAT WAS FOUND IN  
25 THE VAGINAL TRACK IN THIS PARTICULAR CASE.

1 Q. SO ASSUMING THOSE FACTS AND CIRCUMSTANCES, IS IT FAIR  
2 TO SAY YOU WOULDN'T BE ABLE TO DETERMINE SO MUCH FROM THOSE  
3 TESTS?

4 A. NOT A WHOLE LOT. WELL, IN 44 PERCENT OF THE  
5 CIRCUMSTANCES YOU SHOULD BE ABLE TO EXCLUDE A PERSON; 56 PERCENT  
6 OF THE TIME YOU SHOULD BE EXPECTED TO INCLUDE A PERSON.

7 Q. AGAIN, FOR THE BENEFIT OF THE JURORS, WHAT EXACTLY IS  
8 A SECRETOR AND WHAT BLOOD WOULD BE FOUND IN THEIR BODILY FLUIDS  
9 IF ONE WAS A SECRETOR AND WHAT WOULD NOT BE FOUND IF THEY WERE  
10 NOT A SECRETOR?

11 MR. SCHUMACHER: YOUR HONOR, I'M GOING TO OBJECT TO  
12 THIS LINE OF QUESTION AT THIS POINT. I WANT THE JURY TO BE  
13 ELUCIDATED ON THIS, BUT ABSENT ANY EVIDENCE THAT THE  
14 DEFENDANT IS A SECRETOR OR NON-SECRETER, I REALLY THINK  
15 THIS IS IRRELEVANT.

16 THE COURT: I SUSTAIN THE OBJECTION.

17 MR. TOKARS: OKAY, PLEASE BE SEATED, MA'AM.

18 BY MR. TOKARS:

19 Q. IN REFERENCE TO A SCIENTIFIC REPORT DATED JULY 25TH,  
20 DID YOU RECEIVE A RAPE KIT FROM THE STATE CRIME LAB?

21 A. YES, SIR, I DID.

22 Q. WHO WAS THE VICTIM IN THAT CASE?

23 A. THE VICTIM WAS LISTED AS A KYMM LOWNSBURY.

24 Q. AND FROM WHOM DID YOU RECEIVE THAT RAPE KIT?

25 A. DETECTIVE MURRAY FROM FULTON COUNTY POLICE DEPARTMENT.

1 Q. DID YOU EXAMINE ANY SEMINAL FLUID CONTAINED IN THAT  
2 RAPE KIT?

3 A. YES, SIR, I DID.

4 Q. AND DID YOU FIND THE PRESENCE OF SEMINAL FLUID OR  
5 SPERM?

6 A. YES, SIR.

7 Q. OKAY.

8 AND DID YOU, AT ANY POINT IN TIME, RECEIVE A KNOWN  
9 BLOOD SAMPLE FROM THE DEFENDANT HERE ON TRIAL, MR. WILLIE  
10 WILLIAMS?

11 A. YES, SIR, I DID.

12 Q. WHAT TYPE BLOOD DOES HE HAVE?

13 A. INTERNATIONAL BLOOD GROUP A.

---

14 MR. TOKARS: YOUR WITNESS.

15 THE COURT: CROSS-EXAMINATION?

16 CROSS-EXAMINATION

17 BY MR. SCHUMACHER:

18 Q. IT'S YOUR TESTIMONY THAT MR. WILLIAMS HAS BLOOD TYPE A?

19 A. YES, SIR.

20 Q. AND ABSENT THE INDICATION OF THE STATUS, THIS WOULD BE  
21 IRRELEVANT, YOU WOULDN'T BE ABLE TO MAKE THIS TEST; IS THAT  
22 CORRECT?

23 A. YOU -- I'M NOT SURE I UNDERSTAND YOUR QUESTION.

24 Q. ABSENT THE EVIDENCE OF THE SECRETOR OR NON-SECRETOR  
25 STATUS OF THE ALLEGED PERPETRATOR, YOU WOULDN'T BE ABLE TO MAKE

1 THE DETERMINATION LAID OUT IN YOUR EXAMINATION?

2 A. THAT'S CORRECT.

3 MR. SCHUMACHER: NO FURTHER QUESTIONS.

4 THANK YOU VERY MUCH.

5 THE COURT: ANY OTHER QUESTIONS?

6 MR. TOKARS: NOT AT THIS TIME, YOUR HONOR.

7 THE COURT: CALL YOUR NEXT WITNESS.

8 MR. TOKARS: STATE WOULD CALL MR. LARRY PETERSON FROM  
9 THE STATE CRIME LAB.

10 (WHEREUPON, LARRY PETERSON WAS CALLED AS A WITNESS BY  
11 THE STATE.)

12 MR. TOKARS: YOUR HONOR, I WOULD LIKE TO MAKE AN  
13 ~~OFFERING OUTSIDE THE PRESENCE OF THE JURY, IF I MAY.~~

14 THE COURT: SHOW THE JURY TO THE JURY ROOM, PLEASE,  
15 MR. SHERIFF.

16 (WHEREUPON, THE JURY WAS EXCUSED FROM THE COURTROOM AT  
17 4:23 P.M., AND THE FOLLOWING WAS HAD OUT OF THE PRESENCE OF  
18 THE JURY.)

19 THE COURT: PROCEED.

20 MR. TOKARS: YOUR HONOR, JUST IN GENERAL, I THINK YOU  
21 ARE AWARE OF THE SITUATION, HERE, SPECIFICALLY AS IT  
22 RELATES TO THIS CASE. UP UNTIL NOON TODAY, YESTERDAY AND  
23 TODAY, THE STATE DID NOT INTEND TO OFFER AS TESTIMONY  
24 ANYTHING IN -- ANY SCIENTIFIC EVIDENCE IN REGARD TO ANY  
25 HAIR OR SAMPLES THAT WERE FOUND.



1 THE COURT: THAT HAS NOTHING TO DO WITH WHETHER YOU  
2 ARE COMPELLED TO PRODUCE THE REPORTS OR NOT.

3 MR. TOKARS: THAT'S CORRECT.

4 THE COURT: YOU DON'T HAVE TO HAVE ANY INTENTION ABOUT  
5 THEM AT ALL.

6 MR. TOKARS: WELL, I'VE GOT A CASE HERE I THINK IS ON  
7 POINT, AND I THINK IT WILL BE ENLIGHTENING, HERE.

8 THE COURT: OKAY.

9 MR. TOKARS: IN THIS CASE SPECIFICALLY, AND I THINK IT  
10 WILL BE THE TESTIMONY OF MR. PETERSON WE DID NOT EXPECT HIM  
11 TO TESTIFY AND THERE WAS NO REPORT AT ALL PREPARED UNTIL I  
12 SPECIFICALLY ASKED HIM TO DO IT LATE YESTERDAY AND TODAY,

13 ~~NOR DID WE INTEND ON USING ONE. I WOULD LIKE TO CITE THE~~

14 CASE OF BILLINGS VS THE STATE, AND THAT'S AT 161 GEORGIA  
15 APPEALS 500, AND THAT STANDS FOR THE PROPOSITION WHERE TEST  
16 CONDUCTED AFTER COMMENCEMENT OF TRIAL, IT SAYS WHERE  
17 FORENSIC SCIENTIST TESTIFYING FOR STATE PERFORMED TEST  
18 AFTER TRIAL BEGAN SO AS TO REBUT EVIDENCE PRESENTED BY  
19 DEFENDANT AT TRIAL, RESULTS OF SUCH TEST WERE NOT IN  
20 POSSESSION OR AVAILABLE FOR PROSECUTING ATTORNEY WHEN  
21 DEFENDANT SOUGHT DISCOVERY, THUS WERE ADMISSIBLE.

22 WE WOULD ALSO LIKE TO CITE THE CASE OF LAW VERSUS THE  
23 STATE, WHICH IS 165 GEORGIA APPEALS 687, AND THAT STANDS OR  
24 THE PROPOSITION RESULTS OF LABORATORY TESTS ADMISSIBLE  
25 WHERE NO WRITTEN SCIENTIFIC REPORT WAS PREPARED, THEY SAY

1 THE TRIAL COURT PROPERLY ADMITTED TESTIMONY FROM FORENSIC  
2 CHEMIST FROM THE GEORGIA STATE CRIME LAB DESCRIBING THE  
3 RESULTS OF A LABORATORY ANALYSIS OF THE SUBSTANCE FOUND IN  
4 A MOTEL ROOM WHERE THERE WAS NO SCIENTIFIC REPORT PREPARED  
5 AND THERE IS REVEALED NO APPARENT EFFORT BY THE STATE TO  
6 CIRCUMVENT SUBSECTION B OF THIS SECTION, NOR EVEN A HINT OF  
7 PROSECUTORIAL SANDBAGGING, BUT ON THE CONTRARY THERE WAS  
8 TESTIMONY THAT THE SUBSTANCE WAS TESTED BY INDEPENDENT  
9 ANALYST, AND SO ON.

10 AND JUST BASED UPON THESE TWO CASES, YOUR HONOR, I  
11 THINK IT'S EVIDENT THAT THE STATE HAS NOT ATTEMPTED TO  
12 CIRCUMVENT A STATUTE.

13 ~~THE COURT: YOU ARE DRAWING A CONCLUSION. IF YOU WANT~~  
14 TO PRESENT SOME EVIDENCE, I'LL MAKE THAT DETERMINATION ON  
15 THAT. I'LL CERTAINLY MAKE THE BEST DETERMINATION I CAN.

16 MR. TOKARS: OKAY.

17 LARRY PETERSON,  
18 HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS  
19 OUT OF THE PRESENCE OF THE JURY:

20 DIRECT EXAMINATION

21 BY MR. TOKARS:

22 Q. COULD YOU PLEASE STATE YOUR NAME?

23 A. LARRY KEITH PETERSON.

24 Q. MR. PETERSON, BY WHOM ARE YOU EMPLOYED?

25 A. I'M EMPLOYED BY THE GEORGIA STATE CRIME LABORATORY.

1 Q. OKAY. IN REGARD TO THIS CASE INVOLVING MS. KYMM  
2 LOWNSBURY, ARE YOU FAMILIAR WITH THIS CASE AT THIS TIME?

3 A. YES, SIR.

4 Q. AND YESTERDAY -- I GUESS I SHOULD SAY WHEN WAS THE  
5 FIRST TIME THAT YOU WERE CONTACTED BY EITHER MR. ERNIE MILLER OR  
6 ME IN REGARD TO YOUR TESTIMONY IN REGARD TO THIS CASE?

7 A. MY EARLIEST RECOLLECTION WAS YESTERDAY.

8 Q. AND APPROXIMATELY WHAT TIME? LATE IN THE AFTERNOON?

9 A. I DON'T RECALL THE EXACT TIME.

10 Q. WAS IT AFTER LUNCH, THOUGH?

11 A. I BELIEVE IT WAS.

12 Q. OKAY.

~~13 AND WHEN I TALKED WITH YOU, WHAT DID I ASK YOU?~~

14 A. YOU REQUESTED THE RESULTS OF A HAIR COMPARISON.

15 Q. OKAY.

16 NOW. AT THAT TIME IN REGARD TO THE KYMM LOWNSBURY  
17 CASE?

18 A. YES.

19 Q. AT THAT TIME HAD YOU PERFORMED ANY TEST AT ALL?

20 A. NO.

21 Q. AND AT THAT TIME WAS THERE ANY REPORT PREPARED?

22 A. I BELIEVE THERE WAS A REPORT PREPARED BUT NOT THAT  
23 STATED ANY TYPE OF HAIR EXAMINATION.

24 Q. IN OTHER WORDS, THE TEST HAD NOT EVEN BEEN PERFORMED  
25 FOR THE HAIR EXAMINATION?

1           A.    THAT'S CORRECT.

2           Q.    OKAY.

3                    AND AT THAT TIME DID I OR MR. MILLER ASK YOU TO GO

4   AHEAD AND PREPARE THAT REPORT?

5           A.    YES, SIR.

6           Q.    AND DO YOU HAVE THAT REPORT WITH YOU HERE TODAY?

7           A.    NO, SIR, IT'S NOT.  THE TESTS WERE PERFORMED YESTERDAY.

8   THEY WERE ENTERED INTO THE CRIME LABORATORY COMPUTER THIS

9   MORNING, BUT IT'S NOT POSSIBLE TO PRINT A REPORT BUT ONCE A DAY

10   WHICH IS IN THE MORNING WHICH MEANS THE REPORT WILL NOT PRINT

11   UNTIL TOMORROW MORNING.

12           Q.    SO YOU TECHNICALLY DON'T HAVE A REPORT AT THIS POINT

13   IN TIME?

---

14           A.    THAT'S CORRECT.

15           Q.    OKAY.

16                    YOU DID PERFORM THE TESTS YOURSELF; IS THAT CORRECT?

17           A.    THAT'S CORRECT.

18           Q.    DO YOU KNOW WHAT THE OUTCOME OF THOSE TESTS ARE?

19           A.    YES, SIR.

20           Q.    COULD YOU PLEASE RELATE TO THE COURT WHAT YOU WERE

21   ASKED TO DO AND WHAT OUTCOME OF THE TESTS WERE, JUST BRIEFLY?

22           A.    YES.  I WAS ASKED TO EXAMINE SOME CLOTHING FOR THE

23   PRESENCE OF HAIR, ALSO EXAMINE SOME PUBIC COMBINGS OF THE VICTIM

24   AND TO MAKE HAIR COMPARISONS REGARDING THOSE HAIRS RECOVERED.

25                    MY RESULTS, BASICALLY, ARE THAT FROM THE VICTIM'S

1 COMBINGS AND THE HAIR RECOVERED FROM THE CLOTHING REVEALS A  
2 NUMBER OF CAUCASION PUBIC HAIRS.

3 Q. OKAY. AND THAT THERE WEREN'T ANY NEGROID HAIRS FOUND;  
4 IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 MR. TOKARS: THANK YOU, YOUR WITNESS.

7 CROSS-EXAMINATION

8 BY MR. SCHUMACHER:

9 Q. DO YOU HAVE A COPY OF THE REPORT DATED JULY THE 25TH,  
10 1985, IN FRONT OF YOU, SIR?

11 A. YES, SIR.

12 Q. UNDER THE HEADING "DESCRIPTION", WOULD YOU READ ITEM 2?

13 ~~A. YES, SIR. ITEM 2 IS DESCRIBED AS A "BROWN PAPER BAG~~  
14 ~~SEALED WITH STAPLES CONTAINING A ZIP-LOCK PLASTIC BAG CONTAINING~~  
15 ~~QUESTIONED HAIRS."~~

16 Q. WERE THOSE THE HAIRS IN QUESTION HERE?

17 A. THOSE WERE SOME OF THE HAIRS EXAMINED, YES, SIR.

18 Q. WHAT DATE WERE THOSE RECEIVED IN THE CRIME LAB?

19 A. APRIL 18TH, 1985.

20 MR. SCHUMACHER: YOUR HONOR --

21 THE COURT: WAIT A MINUTE, NOW, FINISH YOUR EVIDENCE.  
22 DON'T START MAKING LAWYER SPEECHES UNTIL YOU GET ONE THING  
23 DONE. LET'S HEAR THE EVIDENCE, THEN I'LL HEAR ALL YOUR  
24 EXCITED ARGUMENT YOU WANT TO MAKE.

25 BY MR. SCHUMACHER:

1 Q. SO YOU HAVE HAD THIS EVIDENCE IN THE LAB SINCE THE  
2 18TH OF APRIL?

3 A. THAT'S CORRECT.

4 Q. YOU PERFORMED NO TESTS ON IT UNTIL REQUESTED BY THE  
5 PROSECUTION YESTERDAY?

6 A. THE CASE WOULD HAVE EVENTUALLY BEEN WORKED. THE CASE  
7 HAD NOT BEEN PERMANENTLY SHELVED. IT WOULD HAVE BEEN EVENTUALLY  
8 WORKED. IT'S JUST THAT IT WAS -- WOULD HAVE BEEN, PERHAPS,  
9 MAYBE A MONTH FROM NOW BEFORE IT WOULD HAVE BEEN NORMALLY WORKED  
10 WITHOUT THE PHONE CALL PROMPTING THE WORK TO BE DONE.

11 Q. FROM THE PROSECUTION?

12 A. THAT'S CORRECT.

~~13 Q. SO HAD THE PROSECUTION CALLED YOU IT WOULD HAVE BEEN~~  
14 WORKED UP?

15 A. THEY DID CALL ME, YES, SIR.

16 Q. BUT THEY CALLED YOU YESTERDAY. HAD THE PROSECUTION  
17 CALLED YOU BACK IN THE LAST TWO WEEKS OF APRIL, MAY, JUNE, JULY,  
18 AUGUST OR THE FIRST WEEK OF SEPTEMBER AND REQUESTED THAT THAT  
19 INFORMATION BE WORKED UP, IT WOULD HAVE BEEN WORKED UP?

20 A. IT COULD HAVE BEEN WORKED UP SOONER, YES.

21 MR. SCHUMACHER: NO FURTHER QUESTIONS.

22 MR. TOKARS: YOU MAY STEP DOWN.

23 YOUR HONOR, I WOULD LIKE TO TAKE THE STAND, IF I MAY.

24 (WHEREUPON, FREDERICK W. TOKARS WAS CALLED AS A  
25 WITNESS FOR THE STATE.)

1                               FREDERICK W. TOKARS,  
2       HAVING BEEN DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS  
3       OUT OF THE PRESENCE OF THE JURY:

4                               DIRECT EXAMINATION

5       BY MR. TURNER:

6               Q.     WOULD YOU STATE YOUR NAME, PLEASE?

7               A.     FRED TOKARS.

8               Q.     BY WHOM ARE YOU EMPLOYED?

9               A.     I'M AN ASSISTANT DISTRICT ATTORNEY IN ATLANTA AND I  
10       WORK FOR LEWIS SLATON.

11              Q.     ARE YOU THE ASSISTANT DISTRICT ATTORNEY RESPONSIBLE  
12       FOR THE PROSECUTION OF THE WILLIE OTIS WILLIAMS CASE?

13              A.     ~~THAT'S CORRECT.~~

---

14              Q.     WOULD YOU PLEASE OUTLINE TO THE COURT WHY THE PUBLIC  
15       HAIR EXAMINATION THAT WAS JUST TESTIFIED TO WAS PERFORMED  
16       YESTERDAY AND NOT AT AN EARLIER TIME?

17              A.     SPECIFICALLY, WHEN I GOT INVOLVED IN THE INVESTIGATION  
18       OF THIS CASE, BACK IN JULY, I HAD TALKED WITH ALL THE  
19       INVESTIGATING OFFICERS, SPECIFICALLY SEX CRIME DETECTIVE MURRAY,  
20       AND HE WAS THE INDIVIDUAL WHO ACTUALLY FOUND THE HAIRS IN THE  
21       CAR IN THE DIRECT RESPONSE OF THE VICTIM. AND IT WAS HIS  
22       OPINION AT THE TIME THAT THE HAIRS WERE PROBABLY CAUCASION-TYPE  
23       HAIRS BECAUSE THEY DIDN'T APPEAR TO BE DARK NEGROID-TYPE HAIRS.  
24       HE ASKED ME AT THAT TIME IF I THOUGHT WE SHOULD ANALYZE THEM AND  
25       I SAID NO, I DIDN'T THINK SO BECAUSE IT DIDN'T APPEAR TO BE

1 PERTINENT TO THE CASE.

2 APPROXIMATELY THREE WEEKS AFTER THAT POINT IN TIME I  
3 SAT DOWN WITH DEFENSE COUNSEL AND GAVE HIM COMPLETE DISCOVERY OF  
4 OUR FILE AND WENT THROUGH EVERYTHING I DID HAVE AT THAT TIME.  
5 AND WE DID TALK SPECIFICALLY ABOUT ALL THE EVIDENCE THAT WAS  
6 OBTAINED AND WHAT WAS SUBMITTED TO THE CRIME LAB. AT THAT TIME  
7 I TOLD HIM THAT WE WERE NOT GOING TO RUN THE RESULTS OF THE  
8 FIBER EVIDENCE BECAUSE WE DIDN'T FEEL IT WAS GOING TO BE HELPFUL.  
9 AND HE DID NOT MAKE A RESPONSE IN REGARDS TO THAT AT THAT TIME.  
10 I FELT THEN THAT WE WERE NOT GOING TO BE USING IT AT TRIAL AND  
11 SINCE HE KNEW THAT THERE WAS EVIDENCE THERE AND THAT I HAD  
12 RELAYED TO HIM I DIDN'T THINK IT WAS GOING TO BE HELPFUL TO US  
13 ~~AND WE WEREN'T GOING TO BE PERFORMING THE TESTS. YESTERDAY,~~  
14 WHICH WAS MONDAY, AFTER DEFENSE COUNSEL MADE A COMMENT  
15 CONCERNING THE FIBER EVIDENCE OR THE HAIR BEING IN THE CAR, I,  
16 AT THAT POINT IN TIME, CONTACTED THE STATE CRIME LAB AND ASKED  
17 THEM IF THEY COULD PERFORM THE LAB RESULTS. AND AT THAT TIME,  
18 TALKING TO MR. PETERSON, HE INDICATED THAT HE REALLY DIDN'T WANT  
19 TO COME TESTIFY BECAUSE IT WASN'T GOING TO BE ABLE TO PROVE  
20 ANYTHING FROM HIS POINT OF VIEW AT THAT TIME, THEY WERE NON-NEGROID  
21 TYPE HAIRS, AND SINCE WE WERE LOOKING FOR A BLACK PERSON AS A  
22 SUSPECT HE DIDN'T FEEL AS THOUGH THAT TESTIMONY WOULD BE  
23 RELEVANT.

24 I EXPLAINED TO HIM DEFENSE COUNSEL'S STRATEGY IN THE  
25 CASE, THE FACT HE HAD SPECIFICALLY REFERRED TO HAIR SAMPLES



1 BEING TAKEN AND ASKED HIM TO GO AHEAD AND PERFORM THE ANALYSIS  
2 IF HE COULD AND TO PREPARE A WRITTEN REPORT IF HE COULD. THIS  
3 WAS SUBSEQUENT TO THE BEGINNING OF THE TRIAL.

4 Q. WHAT PURPOSE ARE YOU SEEKING TO INTRODUCE THIS TEST  
5 BASED ON THE RELEVANCY OR LACK OF RELEVANCY THAT YOU JUST  
6 MENTIONED?

7 A. DEFENSE COUNSEL HAS SPECIFICALLY REFERRED THROUGHOUT  
8 THE ENTIRE CASE TO HAIR SAMPLES IN ATTEMPTING TO MISLEAD THE  
9 JURY TO BELIEVE WE HAVE EVIDENCE THAT WE'RE WITHHOLDING. THE  
10 STATUTES THAT I HAVE CITED, THE COURT CASES THAT I HAVE CITED,  
11 SPECIFICALLY TALK IN TERMS OF THE INTENT OF THE STATUTE. I  
12 THINK IT SHOWS FROM MY TESTIMONY AND WHAT WE HAVE DONE THAT  
13 ~~WE'RE NOT TRYING TO CIRCUMVENT THE STATUTE AND WE ARE ONLY~~  
14 OFFERING THIS TESTIMONY IN RESPONSE TO WHAT DEFENSE COUNSEL --  
15 IN RESPONSE TO HIS QUESTIONS.

16 MR. TURNER: NO FURTHER QUESTIONS.

17 THE COURT: CROSS-EXAMINATION?

18 CROSS-EXAMINATION

19 BY MR. SCHUMACHER:

20 Q. MR. TOKARS, AS A MEMBER OF THE DISTRICT ATTORNEY'S  
21 STAFF, IS IT YOUR JOB SIMPLY TO CONVICT OR IS IT YOUR JOB TO SEE  
22 THAT JUSTICE IS DONE?

23 A. I DON'T THINK THAT EITHER ONE OF THOSE CLASSIFICATIONS  
24 WOULD APPROPRIATELY DESCRIBE MY JOB. I THINK SOMEWHERE IN  
25 BETWEEN. I HAVE A JOB TO PRESENT THE CASE.

1 Q. AND DOES THE PRESENTATION OF THAT CASE INCLUDE THE  
2 DEVELOPMENT OF THE EVIDENCE?

3 A. THAT'S CORRECT, IF IT APPEARS AS THOUGH THE EVIDENCE  
4 IS GOING TO HELP ONE WAY OR THE OTHER.

5 MR. SCHUMACHER: NO FURTHER QUESTIONS, YOUR HONOR.

6 THE COURT: ALL RIGHT, ANYTHING ELSE?

7 MR. TOKARS: JUST BRIEFLY IN TERMS OF SHORT ARGUMENT,  
8 YOUR HONOR.

9 THE COURT: ANY FURTHER EVIDENCE FOR EITHER SIDE?

10 MR. TOKARS: NOT FOR THE STATE.

11 MR. SCHUMACHER: NOT FOR THE DEFENSE, YOUR HONOR.

12 THE COURT: ALL RIGHT. ARGUMENT?

13 ~~MR. TOKARS: JUST REAL BRIEFLY, YOUR HONOR.~~

14 YOUR HONOR, FROM THE FACTS AND CIRCUMSTANCES, IT'S  
15 APPARENT THAT WE DIDN'T INTEND TO INTRODUCE ANY OF THIS  
16 TESTIMONY. DEFENSE COUNSEL WAS AWARE OF THIS EVIDENCE OR  
17 OF THE EXISTENCE OF IT, AND ALSO WAS AWARE THAT WE DIDN'T  
18 HAVE -- THAT WE DIDN'T FEEL IT WAS GOING TO BE HELPFUL ONE  
19 WAY OR THE OTHER. I THINK IT WAS QUITE OBVIOUS AND THROUGH  
20 HIS ADMISSION WE WERE LOOKING FOR A BLACK SUSPECT, AND  
21 SINCE WE, ACCORDING THE OUR SEX CRIMES DETECTIVE, DIDN'T  
22 FIND ANYTHING IN THE CAR THAT WOULD LEND ITSELF TOWARD  
23 BEING HAIR FROM A BLACK PERSON, WE DIDN'T INTEND TO USE  
24 THIS EVIDENCE AT TRIAL. BUT UPON THE FIRST KNOWLEDGE OF  
25 ANY OF THESE FACTS AND CIRCUMSTANCES SURROUNDING THIS CASE,

1 SURROUNDING THIS MATTER, I DID RELATE ALL THAT INFORMATION  
2 TO DEFENSE COUNSEL, AND I THINK THE INTENT OF THE STATUTE  
3 IS ILLUSTRATED BY TWO OF THESE CASES, HERE, REALLY IS TO  
4 PREVENT SOMEONE FROM SANDBAGGING THE OTHER SIDE OR FROM  
5 CIRCUMVENTING THE STATUTE. AND I THINK FROM THE FACTS AND  
6 CIRCUMSTANCES IT'S PLAIN THE STATE HAS NOT TRIED TO SANDBAG  
7 ANYTHING. AND IF ANYTHING, DEFENSE COUNSEL IS TRYING TO  
8 SANDBAG THE STATE, AND I THINK IT WOULD BE A GROSS MISCARRIAGE  
9 OF JUSTICE TO ALLOW HIM TO IMPLY AND TO ARGUE THERE WAS ANY  
10 TEST PERFORMED THAT EXCLUDED HIS PERSON IN ANY WAY. I  
11 THINK THE JURORS HAVE THE RIGHT TO KNOW AND I THINK THAT  
12 THE COURT DOES HAVE DISCRETION TO GO ONE WAY OR THE OTHER  
13 ~~IN THIS MATTER, AND I WOULD JUST ASK THE COURT TO ALLOW THE~~  
14 JURORS TO HEAR THE EVIDENCE SO THAT THEY CAN MAKE THE  
15 DECISION AS TO WHETHER OR NOT IT'S HELPFUL ONE WAY OR  
16 ANOTHER.

17 MR. SCHUMACHER: YOUR HONOR, FOR THE DEFENSE I WOULD  
18 DEFER THE COURT TO DEFENSE'S SUPPLEMENTAL DEMAND FOR  
19 DISCOVERY FILED ON 15 JULY, 1985, IN WHICH WE MADE IT  
20 SPECIFICALLY AND EXACTLY CLEAR TO THE PROSECUTION WHAT WE  
21 WERE REQUESTING THAT THEY PRODUCE, UNDER THE STATUTE --  
22 ITEM E OF THAT SUPPLEMENTAL DEMAND FOR DISCOVERY WAS FOR  
23 THE LAB REPORT REGARDING HAIRS TAKEN FROM THE VEHICLE OF  
24 THE VICTIM'S CAR (LOWNSBURY), AND SUBMITTED TO THE CRIME  
25 LAB FOR ANALYSIS. I AM DEEPLY UPSET AND CHAGRINLED THE

1 PROSECUTION IS GOING TO SAY I'M TRYING TO SANDBAG.

2 THE COURT: AIN'T NOTHING WRONG IN THAT. CRIMINAL LAW  
3 OF THIS COUNTRY PERMITS THE DEFENDANT TO SANDBAG THE  
4 PROSECUTION BUT NOT VICE-VERSA. IT ENCOURAGES SANDBAGGING  
5 BY DEFENDANTS. THAT'S ONE OF THE HORRIBLE THINGS ABOUT  
6 THIS SOCIETY. WE NOT ONLY GIVE THE DEFENDANT THEIR RIGHTS,  
7 BUT WE ENCOURAGE THEM TO CHEAT CRIMINAL PROCEEDINGS, NO  
8 DOUBT ABOUT IT. I TAKE JUDICIAL NOTICE OF IT. AND  
9 DEFENDANTS AND CRIMINAL LAWYERS DO TAKE THE PROSECUTION,  
10 AND YOU ARE PERMITTED TO AND ENCOURAGED TO IT SEEMS. BUT  
11 ESSENTIALLY, YOU DON'T HAVE TO APOLOGIZE ABOUT IT. YOU ARE  
12 DOING WHAT YOU ARE SUPPOSED TO.

---

13 ~~MR. SCHUMACHER: I WOULD FURTHER POINT OUT TO THE~~  
14 COURT THAT IN THE CASE OF LAW VS THE STATE, CASE OF LAW VS  
15 THE STATE, JUSTICE WELTNER AND JUSTICE SMITH WROTE TWO REAL  
16 STRONG DISSENTING OPINIONS, AND I BELIEVE THE QUESTION IS  
17 PROBABLY NOT TOTALLY DECIDED IN THIS CASE, OR AT LEAST IT'S  
18 IN A CONDITION OF UNREST. BUT AT ANY RATE, I THINK THE  
19 EVIDENCE, TESTIMONY, THE MOTION FILED THE WAY THIS CASE HAS  
20 BEEN BROUGHT FORWARD, DEMONSTRATES COMPLETELY AND 100  
21 PERCENT THAT THE DEFENSE HAS BEEN RIGHT UP FRONT WITH THE  
22 PROSECUTION AS TO WHAT WE WANT. NOW, THE FACT THAT WE  
23 DIDN'T MENTION THE HAIRS UNTIL YESTERDAY OTHER THAN IN OUR  
24 SUPPLEMENTAL DEMAND FOR DISCOVERY, THAT MEANS ABSOLUTELY  
25 NOTHING. IF THE PROSECUTION DOESN'T PREPARE ITS CASE, WE

1 ARE ENTITLED TO POINT OUT TO THE JURY THAT THEY HAVEN'T  
2 PREPARED THEIR CASE. IF THERE IS EVIDENCE FOR ONE REASON  
3 OR ANOTHER THE PROSECUTION DOESN'T PRESENT TO THE JURY, WE  
4 ARE PERMITTED TO POINT OUT TO THE JURY THIS FACT.

5 THE COURT: I CAN'T ADOPT THAT POSITION.

6 MR. SCHUMACHER: BUT I WOULD SUBMIT TO THE COURT THAT  
7 IN THE CASE OF THE HAIRS, WE MADE DEMAND FOR THEM, WE MADE  
8 DEMAND IN ORIGINAL MOTION FOR DISCOVERY. WE MADE SPECIFIC  
9 DEMAND CITING WHAT WE ACTUALLY WANTED, THE HAIRS, THE  
10 RESULT OF THE TEST OF THE HAIRS, AMONG OTHER THINGS. AND  
11 WE WOULD SUBMIT THAT THE STATE DID NOT COMPLY WITH THE  
12 STATUTE AND THAT INFORMATION SHOULD BE EXCLUDED.

13 THE COURT: ALL RIGHT, SIR.

14 MR. SCHUMACHER: THANK YOU, SIR.

15 THE COURT: ANYTHING ELSE, MR. TOKARS?

16 MR. TOKARS: JUDGE, JUST VERY BRIEFLY, YOUR HONOR.  
17 ONE MORE CASE, LAW VS THE STATE, 165 GEORGIA APPEALS 687,  
18 AS CITED BY DEFENSE COUNSEL, ALSO STANDS FOR THE  
19 PROPOSITION THAT THE RESULT OF LABORATORY TESTS ARE  
20 ADMISSIBLE WHERE NO WRITTEN SCIENTIFIC REPORT WAS PREPARED.  
21 AND HERE IN THIS CASE WE CERTAINLY DON'T HAVE A REPORT AS  
22 OF THIS DATE BY DEFINITION AND WE DON'T, AND WE NEVER EVEN  
23 INTENDED TO HAVE ONE. SO I THINK IF THERE WAS A CASE WHERE  
24 THE COURT WOULD BE -- COULD EXERCISE ITS DISCRETION WOULD  
25 BE HERE FOLLOWING THESE SERIES OF CASES. THE INTENT BY THE

1 STATE WAS NOT TO CIRCUMVENT THE STATUTE. WE MADE HIM AWARE  
2 OF WHAT WE THOUGHT THE RESULTS WOULD BE AND WE STILL, TO  
3 THIS DATE, DO NOT HAVE A SCIENTIFIC REPORT AND THERE IS A  
4 CASE HERE THAT ALLOWS THE STATE TO OFFER THAT TESTIMONY IF  
5 THERE IS NO REPORT PREPARED.

6 WE WOULD ASK THE COURT TO PERMIT IT. I THINK THE  
7 JURORS ARE BEING MISLED, AND IN A CASE AS SERIOUS AS THIS I  
8 THINK THAT THEY HAVE THE RIGHT TO KNOW. WE WOULD JUST ASK  
9 THE COURT TO PERMIT, TENDER IT INTO EVIDENCE.

10 THE COURT: ALL RIGHT, I'M GOING TO SUSTAIN THE  
11 OBJECTION IN THIS CASE. THE CASE HAS BEEN GOING ON FOR  
12 THREE MONTHS. THE STATE HAS REQUESTED AT LEAST TWO  
13 ~~CONTINUANCES IN ORDER TO OBTAIN THEIR CRIME LAB REPORT AND~~  
14 HAS INSISTED ON PROCEEDING TO TRIAL EVEN THOUGH THE  
15 DEFENDANT CONTENDED AT THE TIME THE CASE WAS CALLED FOR  
16 CALENDAR, THE CASE WAS CALLED FOR TRIAL, THAT HE WAS NOT  
17 READY BECAUSE HE HAD NOT RECEIVED SUCH REPORTS UNTIL JUST  
18 THE MORNING OF THE TRIAL, AND THIS IS A MATTER WHICH THE  
19 EVIDENCE HAS BEEN IN THE HANDS OF THE STATE CRIME LAB FOR  
20 APPROXIMATELY FOUR MONTHS. LOOKS LIKE A LITTLE LONGER THAN  
21 FOUR MONTHS, WITH THE PRELIMINARY REPORT, EARLIEST REPORT  
22 OF THE STATE CRIME LAB DATED JULY 25TH STATING TO THE  
23 DISTRICT ATTORNEY THEY HAVEN'T PERFORMED SUCH AN ANALYSIS  
24 BUT IF THEY WANT THEM TO DO IT TO CALL THEM AT SUCH AND  
25 SUCH A TELEPHONE NUMBER AND TELL THEM TO DO IT. STATE HAS

1 NOT DONE IT UNTIL AFTER THE CASE WENT ON TRIAL, AND THE  
2 DISTRICT ATTORNEY HAS TALKED WITH, ACCORDING TO -- IF I  
3 UNDERSTAND HIS TESTIMONY, TALKED WITH THE DEFENSE ATTORNEY,  
4 TOLD HIM HE DIDN'T INTEND TO HAVE IT, AND MAY HAVE  
5 RESTED ON THAT BASIS ALL ALONG, AND I DON'T THINK THE  
6 STATE OUGHT TO BE PERMITTED TO COME ALONG AND ON THIS KIND  
7 OF FACT SITUATION THEN ORDER THE ANALYSIS TO BE DONE IN THE  
8 COURSE OF THE TRIAL TO PRESENT THE EVIDENCE.

9 I'M GOING TO SUSTAIN THE OBJECTION AND EXCLUDE IT  
10 UNDER THE PRESENT STATUTORY AND CASE LAW OF THIS STATE.

11 MR. TOKARS: YOUR HONOR, JUST FOR POINT OF  
12 CLARIFICATION, IF DEFENSE COUNSEL CONTINUES TO TALK ABOUT  
13 ~~POTENTIAL EVIDENCE ON DIRECT, THE STATE WOULD, YOU KNOW,~~  
14 ATTEMPT TO OFFER IT IN REBUTTAL OR AT LEAST EXPLAIN  
15 ANYTHING THAT WOULD BE OPENED UP.

16 THE COURT: ALL I CAN SAY IS YOU CAN MAKE A PROFFER.  
17 THE STATUTE ADDRESSES THAT, TOO. IT SAYS YOU CAN'T USE IT  
18 FOR REBUTTAL, BUT THERE MAY BE SOME CIRCUMSTANCES WHERE YOU  
19 CAN USE IT FOR REBUTTAL, OR HE MAY BRING IT IN HIMSELF AND  
20 HE MAY OPEN IT UP.

21 THIS IS EXCLUSIONARY RULE BY STATUTE OF THIS STATE.  
22 THIS IS NOT SOMETHING PULLING OUT OF U.S. SUPREME COURT.  
23 THIS IS THE LEGISLATURE WROTE IT, DISTRICT ATTORNEYS OUGHT  
24 TO BE ABLE TO READ IT.

25 MR. TOKARS: OKAY, YOUR HONOR. AT THIS POINT IN TIME