

1 MR. RANDALL: State calls Joe Crow.

2 THE COURT: You may proceed.

3 oOo

4 JOSEPH CROW,

5 being duly sworn by the deputy clerk, testified as follows:

6 DIRECT EXAMINATION

7 QUESTIONS BY MR. RANDALL:

8 Q State your name and your occupation, please.

9 A Joseph Crow, Criminalist, St. Louis Metropolitan
10 Police Department.

11 Q Mr. Crow, can you tell this jury what a criminalist
12 does in his day to day work with the police department?

13 A Receive evidence submitted by police officers,
14 perform tests on the evidence received, write a report con-
15 cerning the evidence received and the results of the tests
16 and to testify in court concerning the evidence received, the
17 test performed and the results.

18 Q Now, when the Sex Crimes Unit of the police department
19 receives a rape kit or sexual assault kit from the hospital,
20 where do they take it?

21 A They bring it to the laboratory.

22 Q And is it one of your duties to examine the specimens
23 brought in in those kits?

24 A Yes, it is.

25 Q I want to ask you about an examination that you did

1 on sexual assault kit that was brought in by Detective Fred
2 Turner concerning victim Kimberly Porter. Did you examine
3 the specimens in that sexual assault kit?

4 A Yes, I did.

5 Q Can you tell the jury what specimens you had to
6 work with?

7 A There was a vaginal smear and anal smear and oral
8 smeal, a vaginal swab, and an anal swab and oral swab and
9 a pair of panties, a blood sample and a saliva sample.

10 Q Now, when you specifically, what do you do when you
11 look at these things, this is before there's at this point,
12 there's no suspect, right? When you did this examination?

13 A In this particular case, there was no suspect, however,
14 the procedure is the same if there is a suspect or not. I
15 do a microscopic examination of the anal, oral and vaginal
16 smears looking for the presence of human spermatazoa.

17 Q Now, can you tell the jury what's the difference
18 between a vaginal swab and a vaginal smear and how those are
19 prepared at the hospital and what their purpose is when you
20 have them?

21 A The vaginal swab is like what they use to retrieve
22 a vaginal swab is they use a cotton swab similar to a Q-tip
23 however, they are about six inches long. In the case of a
24 vaginal swab the doctor would insert the swab into the
25 victim's vagina and rub the cotton part of the swab on the

1 vaginal wall. The purpose of which is to pick up any material
2 from the vagina. The anal swab is placed in the victim's
3 anus about, on, someplace about three inches, again the walls
4 of the rectum are swabbed . And oral swab, the area between
5 the cheek and gums are swabbed. The three swabs are then
6 taken and rolled across a piece of glass. The idea is to
7 deposit part of the material on the swab on to the glass slide.
8 The glass slide then becomes the smear.

9 Q Okay. So what is on the swab should be the same is
10 on the smear, they're not two separate tests, they're just
11 taken -- the material taken from the oraface and putting it
12 on the slide?

13 A Yes.

14 Q The swab itself, is that saved?

15 A Yes, it is.

16 Q Why?

17 A For one of two reasons. If the smear is negative
18 for spermatazoa, there is the possibility that the person who
19 had intercourse with the victim was aspermatic. It could
20 either be a vasectomized male or he could have a pathological
21 disease that would cause him not to have or not to produce
22 spermatazoa.

23 Q When you say aspermatic, that means there are no
24 sperm in the seminal fluid?

25 A Yes.

1 Q Okay. But this type of a person could still ejaculate
2 and have seminal fluid?

3 A Yes.

4 Q But it just doesn't contain sperm?

5 A Yes.

6 Q Okay. So that's one. What was the other reason?

7 A The first reason was if it was negative. The second
8 or the other reason is if the swab, if the smear is positive
9 for human spermatazoa, then we retain the swab in order to
10 do additional tests to try to determine the blood type of the
11 person who deposited the spermatazoa.

12 Q Did you receive any other materials other than the
13 stuff in the rape kit that you examined concerning Kimberly
14 Porter's case?

15 A Yes, there were.

16 Q Does that consist of her clothing?

17 A Yes.

18 Q Among the clothing is a blue jacket and a red or a
19 maroon pair of panties, were those two items among the clothing
20 that you received?

21 A The panties were in the sexual assault kit.
22 The blue jacket came in a separate bag along with her other
23 clothing.

24 Q All right. Now, concerning your examination of the
25 vaginal smear, did you find anything?

1 A Yes. A microscopic examination of the vaginal smear
2 revealed the presence of human spermatazoa.

3 A And did you examine the blue jacket?

4 A Yes, I did.

5 Q And what result did you get in that examination?

6 A There was a micro-visual examination of the jacket
7 revealed a large stain on the jacket. A chemical test of the
8 stain indicated that the stain contained human seminal fluid.
9 I then cut a small portion of the stain out and extracted
10 the material or the stain and looked at that microscopically
11 and found human spermatazoa.

12 Q What results did you get from your examination?

13 A A chemical analysis of the crotch area of the
14 panties revealed the presence of human seminal fluid. A small
15 piece of the stain was cut out and extracted and looked
16 at microscopically and human spermatazoa heads were found.

17 Q Now, at that time, was any typing attempted at that
18 time?

19 A No, it was not.

20 Q Okay. You later, pursuant to a court order, were
21 supplied with a sample of Lonnie Erby's saliva?

22 A Yes, I was.

23 Q The antigens in saliva and in other bodily fluids
24 such as seminal fluid and blood are the same?

25 A Yes.

1 Q Did you compare the defendant's saliva with the
2 seminal fluid that you found on or with the sperm and seminal
3 fluids that you found on the panties and the jacket and the
4 vaginal smear or rather vaginal swab that were collected
5 from Kimberly Porter?

6 A Yes, I did.

7 Q Okay. Just so -- can you give us a little explanation
8 of what -- how this comparison is done chemically, what is it
9 in the saliva and other bodily fluids that is comparable to
10 each other and you can tell this is similar or this is
11 dissimilar.

12 A Everybody has an A.B.O. blood type. You might be
13 a positive or you're negative you have on blood. Eighty per
14 cent of people, their blood type, their A.B.O. blood type
15 is also found in their other body fluids that includes your
16 saliva, in males, their seminal fluid and in females their
17 vaginal secretions. In approximately twenty per cent of the
18 people, even though your blood type might be A, an examination
19 of your saliva or your vaginal secretions or your blood, you
20 do not see that antigen.

21 Therefore, to perform these tests we can not use
22 blood, we must use other body fluids. The most convenient
23 and the easiest one to get is, I'm sorry, is saliva. So we
24 used or I use saliva to determine what the blood type of
25 the male seminal fluid is and I use saliva to return the

1 the blood type of the females vaginal secretions.

2 Q Did you compare and do an antigen typing that you're
3 describing here of the defendant's saliva?

4 A Yes, I did.

5 Q And what is -- is there a category for the type of
6 bodily fluid he has or the antigens in the body fluid?

7 A Mr. Erby's saliva contained the H. antigen only.
8 The H. antigen indicates that the person is a secreter,
9 that is his A.B.O. blood type appears in his saliva. Since
10 there was no A. or B. found, Mr. Erby has to have type O. blood.
11 Therefore, he is in a -- he is designated as a type O. secreter.

12 Q Now, did you examine the seminal fluid on the
13 vaginal swab prepared at the hospital?

14 A Yes, I did.

15 Q And did you get an antigen typing from that?

16 A Yes, I did.

17 Q What type was that?

18 A The only antigen found was the H. antigen.

19 Q Okay. So that seminal fluid came from what type of
20 a secreter?

21 A Well, knowing that the victim was also a type O.
22 secreter --

23 Q I may have -- go ahead a little bit. Do you know
24 the victim is also a type from her saliva sample?

25 A The saliva sample of the victim was conveyed to the

1 laboratory in the sexual assault kit.

2 Q So with that knowledge ahead of time, what did this
3 test reveal?

4 A That the victim had intercourse with someone who
5 was either a type O. secreter, in which case the H. antigen
6 came both from the victim and the suspect or the victim and
7 the male or the person she had intercourse with was a non-
8 secreter and everything came from her. We know that it could
9 not have been a type A. person or a type B. person because
10 neither of those antigens were present, therefore, she had
11 intercourse with either an O. secreter or a non-secreter.

12 Q Did you get a similar result when you tested the
13 stain on the panties or did you find any? Were you able to
14 find anything on the stain of the panties other than the
15 presence of seminal fluid, could you get a typing on them?

16 A Attempts at typing the stain on the panties were
17 inconclusive.

18 Q How about the blue jacket?

19 A The blue jacket, the H. antigen was found on the
20 jacket, a test was run to see if any vaginal secretions were
21 in the stain and that test came up negative. Therefore, I
22 decided that the stain was all seminal fluid. Therefore, the
23 H. antigen had to have come from the person who deposited the
24 stain. Therefore, the person who deposited that stain had
25 to have been a type O. secreter. It could not have been a

1 non-secreter.

2 Q I want to show you State's Exhibit 22. And ask if
3 you recognize this inside out blue jacket?

4 A Yes, I do.

5 Q Okay. Now, there are a couple holes in the front,
6 did you cause either of those holes?

7 A I caused both of those holes.

8 Q That was in collecting your samples?

9 A Yes, it was.

10 Q If we assume that the person who had sexual inter-
11 course with Kimberly Porter also spilled that seminal fluid
12 on the jacket, that would mean she had sexual intercourse
13 with somebody who was a type O. secreter?

14 A Yes.

15 Q And the defendant, based on your testimony is a --
16 the saliva is a type O. secreter?

17 A Yes.

18 Q How far does that narrow it down? How many people
19 are type O. secreters?

20 A Approximately one-third of the general U.S. population
21 are type O. secreters. So cut it down, it eliminated two-
22 thirds of the males and left one-third remaining.

23 Q This is State's Exhibit marked State's Exhibit 22A,
24 the blue jacket is State's Exhibit 22. Do you recognize
25 that package and can you tell us what's inside that package,

1 if you do recognize it?

2 A I recognize the slide mailer and it contains the
3 slide where I place --well, after cutting a portion of the
4 jacket out and extracting the stain from the material, I
5 placed the liquid on the glass slide, dried it and looked
6 at the material microscopically and the slide that I placed
7 that liquid on is inside of this slide here.

8 Q Okay. I want to show you what's been marked State's
9 Exhibit Number 25 and ask if you recognize that?

10 A Yes, I do.

11 Q Those are the panties that came with Kimberly
12 Porter's sexual assault kit from the hospital?

13 A Yes, it is.

14 Q And I want to show you now what's been marked
15 State's Exhibit 25A and ask if you can tell me what 25A is,
16 if you recognize it?

17 A This is the glass slide containing the liquid that
18 I extracted from the stain in the crotch of the red panties.

19 MR. RANDALL: Your Honor, I would ask State's
20 Exhibit 22A and 25A be admitted into evidence.

21 MR. OCHS: No objection.

22 THE COURT: BE so received.

23 Q (by Mr. Randall) Mr. Crow, I want to show you this
24 package which has been marked on the outside State's Exhibit
25 26 that designates a contents, do you recognize that?

1 A Yes, I do.

2 Q What is that?

3 A This is the vaginal smear that came in the sexual
4 assault kit on Kimberly Porter.

5 Q Now, is that the smear or the swabs?

6 A This is the swab.

7 Q Okay. And I want to show you State's Exhibit 27,
8 and ask if you can identify that?

9 A Yes, I do. This is the vaginal smear.

10 Q Okay. And these swabs are taken and rubbed on that
11 or rolled on to that, these swabs create that smear?

12 A Yes.

13 Q Okay. And finally, State's Exhibit Number 28,
14 do you recognize what that is?

15 A Yes, I do.

16 Q What is that?

17 A This is the saliva sample that Mr. Erby gave to me
18 at the St. Louis Police Department laboratory.

19 Q You personally retrieved the saliva from the defendant?

20 A He did it to himself in my presence.

21 Q Okay. He puts a piece of cotton in his mouth?

22 A Chews on it.

23 MR. RANDALL: I would ask State's Exhibit 26, 27 and
24 28 be admitted into evidence.

25 MR. OCHS: As to State's Exhibit 28, in line with

1 my previous objection heard by this court.

2 THE COURT: Objection be overruled. Be so received.

3 Q (by Mr. Randall) Now, Mr. Crow, I want to ask you
4 questions concerning an examination of a sexual assault kit
5 that was done by Donna Bell of your office. You know who
6 Donna Bell is?

7 A Yes, I do.

8 Q She's also a criminalist?

9 A Yes, she is.

10 Q Do you have a record and have you reviewed records
11 indicating her examination of the sexual assault kit that
12 was made at the hospital and brought to the police lab by
13 Detective Dennis Pollihan?

14 A I have a report of the sexual assault kit that
15 Donna Bell worked and it was examined for Officer Pollihan,
16 however, I am not sure if he was the one who actually brought
17 the kit in.

18 Q I see he's the one who requested the examination?

19 A Yes.

20 Q And when your office, the police laboratory receives
21 a rape kit, is it a record like this record that Donna Bell
22 made kept everytime she does one of those examinations?

23 A Yes.

24 Q And so it's kept in the day to day course of business?

25 A Yes, it is.

1 Q And would she have written up her report at the same
2 time or shortly after she did her examination?

3 A Yes.

4 Q Do you have, obviously you brought one with you, do
5 you have access to those records?

6 A Yes, I do.

7 Q And are they from time to time within your care,
8 custody and control?

9 A Yes, they are.

10 Q Can you tell from the record that Donna Bell made,
11 what samples she had, what specimens she had in the sexual
12 assault kit that she received concerning Vadie Vaughn?

13 A Yes, I do.

14 Q What can you -- would you list those, please?

15 A One sexual assault kit consisting of a vaginal smear
16 B and an anal smear C and an oral smear D, a vaginal swab E,
17 and oral swab F, saliva sample G and one pair of panties.
18 Also, one bag containing clothing of the victim consisting
19 of a grey and blue shirt and B, one pair of blue jeans.

20 Q I want to show you what's been marked State's
21 Exhibit Number 26, are you familiar with Donna Bell's initials?

22 A Yes.

23 Q Do you find her initials on there anywhere?

24 A Yes, I do.

25 Q Is there an indication on that what that is?

1 A The slide mailer says vaginal smear and the metro-
2 politan police, city of St. Louis evidence sticker that is
3 affixed to it is marked specimen Q-1 and Q-1A is a vaginal
4 smear.

5 Q And that's on her record there?

6 A Yes, it is.

7 Q And if you would look at what's been marked State's
8 Exhibit Number 7, do yousee Donna Bell's initials on there
9 anywhere?

10 A Yes, I do.

11 Q And can you tell from the markings on that package
12 what that is and whether or not it is a part of what she
13 examined in her record?

14 A The cardboard mailer is stamped anal smear and the
15 metropolitan police, City of St. Louis evidence sticker is
16 marked Q-1B according to the record, Q-1B is an anal smear.

17 Q Referring again, I would ask at this time that
18 State's Exhibit 6 and 7 be admitted into evidence.

19 MR. OCHS: I have no objection in line with the
20 previous agreement.

21 THE COURT: Be so received.

22 Q (by Mr. Randall) Now, referring to the record of
23 Mrs. Bell, prepared in her examination, can you tell what her
24 findings were concerning the anal swab and vaginal swab or
25 smear and smear, rather?

1 A A serological examination disclosed the following:
2 the presence of spermatazoa heads on the vaginal smear and swab.

3 Q And on the oral swab and panties and oral smear,
4 there was nothing found on those?

5 A No, there was not.

6 Q Now, the specimens that she examined in that rape
7 kit, specifically vaginal swab and anal swab that these smears
8 were created from, did you personally examine them?

9 A Yes, I did.

10 Q And the same kind of antigen typing that you conducted
11 in the Kimberly Porter case, did you also do that in the
12 Vadie Vaughn case and with this vaginal and anal swab?

13 A Yes, I did.

14 Q And the -- what results did you get from that
15 examination?

16 A That both the victim, Vadie Vaughn, and the defendant,
17 Mr. Erby are type O. secreters. The anal swab was inconclu-
18 sive as to A.B.O. blood type and the vaginal swab revealed
19 the presence of the H. antigen.

20 Q And what can you conclude from that?

21 A That the victim had intercourse with either a type
22 O. secreter or a non-secreter, that Mr. Erby is a Type O.
23 secreter. The results are consistent with the victim and
24 the suspect having had sexual intercourse and that approximately
25

1 fifty per cent of the male population could have had inter-
2 course with the victim and we would have had the same results.

3 Q Did you also examine sexual assault kit that was
4 brought into the lab concerning a rape of Bernadette Brandon?

5 A Yes, I did.

6 Q At the time of your examination, were you aware
7 she had bathed immediately after her rape incident?

8 A No, I did not.

9 Q Well, in your examination, was anything found of
10 significance in any seminal fluid or any spermatazoa found
11 anywhere on any of those items?

12 A The vaginal, anal and oral smears were negative
13 for human spermatazoa, they were then checked for seminal
14 fluid, they were negative for seminal fluid. The panties,
15 they were not examined, they were unable to be worn and
16 anything that would have come up on those, we would have had
17 to have assumed it was placed there prior to the incident.

18 Q Her panties were so badly torn that she didn't put
19 them back on after the rape so they actually wouldn't have
20 contained anything, is that what you're trying to say?

21 MR. OCHS: Judge, he's leading the witness.

22 THE COURT: Be sustained as to form.

23 Q (by Mr. Randall) I want to show you State's Exhibit
24 13, do you recognize those?

25 A Yes, I do.

1 Q Okay. Because of the condition that they were in,
2 they were not examined?

3 A Well, yes they could not be worn the way that they
4 are made to be worn and any vaginal leakage would not have
5 leaked on to the panties, they would -- they were unnormal
6 circumstances, therefore I did not examine them.

7 Q Now, in each of these rape kits were hair combings
8 and pulled hairs taken from each of these three victims?

9 A Yes, they were.

10 Q And pursuant to a court order, did I also supply the
11 laboratory with head hair and pubic hair of the defendant?

12 A Yes, they were supplied.

13 Q In those hairs in all three of those examinations,
14 those hairs were examined by a Harold Messler who is also a
15 criminalist with the laboratory?

16 A Yes, they were.

17 Q And do you have those records with you?

18 A Yes, I do.

19 Q Okay. In the examinations of the combings from the
20 victim's -- first of all, they combed the victim's hair for
21 loose hair?

22 A Yes, they do.

23 Q In none of the three cases were any -- were any
24 foreign hairs dissimilar to the victim's own hair found?

25 A None were found.

1 Q So insummary, Kimberly Porter's case, you can narrow
2 it down to if the person who raped her also left this seminal
3 fluid on her jacket which is pretty logical conclusion, we
4 can narrow it down to someone within thirty-three per cent of
5 the population?

6 A Yes.

7 Q And this defendant is within that same thirty-three
8 per cent of the population?

9 A Yes.

10 Q In the Vadie Vaughn case, we can only narrow it down
11 to fifty per cent of the population?

12 A Yes.

13 Q And this defendant is in that fifty per cent because
14 he's a non-secreter?

15 A Yes.

16 Q And in the Bernadette Brandon case, we found nothing?

17 A Yes.

18 MR. RANDALL: Nothing further.

19 THE COURT: You may inquire.

20 MR. OCHS: Thank you, Judge.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. OCHS:

23 Q Mr. Crow, under examination by Mr. Randall you
24 testified that by looking at the seminal fluid that you found
25 on the jacket in the Kimberly Porter case you were able to

1 determine that the person who discharged that fluid on that
2 jacket had an H. antigen?

3 A Yes.

4 Q How were you able to determine whether that secretion
5 was from Kimberly Porter or the person who assaulted Kimberly
6 Porter on that date?

7 A I did an electropherdic (sic) examination of the
8 same. The purpose of that is to see if there was any vaginal
9 acid phosphotates in the stain present.

10 Q On the jacket?

11 A ON the jacket.

12 Q Were there any?

13 A No, there were not.

14 Q What would that lead you to conclude?

15 A That the person who that that stain was ejaculated
16 on to the jacket as opposed to having been ejaculated into
17 somebody and then having run out.

18 Q So what you could determine from examining that stain
19 was that it came from a male and not a female?

20 A Well, it did not have a mixture of vaginal and --
21 let's see, did not have a mixture of vaginal secretions and
22 seminal fluid.

23 Q Did you examine that entire stain or just a portion
24 of it?

25 A Just a portion.

1 Q And the portion that you examined, you were not able
2 to find any fluids that would be common, I guess, from a
3 vaginal fluid, am I messing this up?

4 A What I did was I did, I cut a stain out and then I
5 took a small portion of that stain that I cut out and
6 used it to do electropheradic test and the other portion to
7 do the typing, I did not find any vaginal acid phosphotates on
8 the portion that I did the electropheradic test on.

9 Q Now, again, Mr. Crow, would that lead you to conclude
10 that the stain that you examined was from a male and not a
11 female?

12 A It would lead me to believe that it was only from a
13 male.

14 Q And what degree of scientific certainty can you say
15 that you deal with percentage, what scientific percentage?

16 A The color test that is involved in this would not
17 give you a false negative unless the amount of vaginal
18 secretions were probably down at somewhere less than one per
19 cent or two per cent, the total stain. The percentage of
20 mixtures in which the amount of vaginal secretions is
21 present yet too weak to give it a color test. I did not
22 give any.

23 Q Isn't it possible that some of the secretions on that
24 jacket were from a female?

25 A Yes.

1 Q Would that have any effect on your test of H. antigens?
2 Let me rephrase the question, Mr. Crow. I'll withdraw the
3 last question. In testing that sample, if the vaginal fluids
4 or the phosphotates, whatever it is you were looking for,
5 was too low of a percentage to determine with the test you
6 performed, could there still be an H. antigen show up that
7 could have been secreted from a female?

8 A I believe that the -- how is the word, that the -- if
9 there was not enough or if there was not enough vaginal
10 secretions present to give a color test in the acid phosphotates
11 then it is safe to assume that there was not enough present
12 to react in the H. antigen test.

13 Q Again, could it be possible to find H. antigens
14 without finding any evidence of a vaginal, I guess, fluids
15 in line with the previous question that it came from H.
16 antigen, have come from the female and not the man. You said
17 it's safe to assume but is it possible?

18 A In a -- in a normal female or --

19 Q Is there a possibility you can give me a yes or no
20 answer on this?

21 A No.

22 If I'm going to have to say yes or no, I would say
23 that it is impossible to find an H. antigen from the vaginal
24 secretions if the acid phosphotase test came up negative
25 for vaginal secretions.

1 Q So that would lead you to believe that that sample
2 on that jacket came from a male, is that correct?

3 A Yes.

4 Q And with what degree of medical or scientific
5 certainty can you say that?

6 A I would say that within a reasonable degree of
7 scientific certainty that that stain came from a male.

8 Q And the results of this test that you performed with
9 the saliva sample from Lonnie Erby and the testing of the
10 samples from Vadie Vaughn lead you to what conclusion as to,
11 again, because you refer to your notes, tell me what the
12 conclusions were?

13 A Vadie Vaughn was the -- in Vadie Vaughn's case, it
14 was fifty per cent.

15 Q And the Kimberly Porter analysis, what was that?

16 A There were two of them to the --

17 Q What's the first one?

18 A On the intercourse that is on the vaginal swab, it
19 was fifty per cent, that is fifty per cent she could have had
20 intercourse with fifty per cent of the people and we would
21 have gotten, we would expect these results. On the jacket
22 since we were able to, excluding the non-secreters, it dropped
23 down to thirty-three per cent.

24 Q So in Kimberly Porter, thirty-three per cent of the
25 male population of the United States could have been responsible

1 for that rape, are the results of that test you performed?

2 A Yes.

3 Q And in the Kimberly -- or in the Vadie Vaughn, fifty
4 per cent of the male population of the United States could
5 have had these same results?

6 A Yes.

7 Q Now, you had testified that you had found some or you
8 had examined some hair samples from the victims?

9 A No.

10 Q1 Or you had some records that showed those hair
11 samples had been examined?

12 A Yes, I did.

13 Q Now, was their hair pulled from the head, do you have
14 those records with you, Mr. Crow?

15 A Yes, I do.

16 Q Do you have the records referring to Vadie Vaughn?

17 A Yes, I do.

18 Q And what hair samples refer to those records who
19 filled -- who make those records, who performed those tests?

20 A Harold Messler.

21 Q Is he with your department?

22 A Yes, he is.

23 Q Could you tell the jury what specimens he took from
24 Vadie Vaughn?

25 A Well, Mr. Messler did not personally take the hairs.

1 Q Could you tell what hair -- what samples or specimens
2 were given to Harold Messler through the rape kit?

3 A Pulled head hair, pulled pubic hair, head hair
4 combings and pubic combings.

5 Q And did you have the Kimberly Porter report?

6 A Yes, I do.

7 Q And was that a report made by Mr. Messler again?

8 A Yes, it was.

9 Q And were there certain specimens given to him
10 through the rape kit?

11 A Yes, there were.

12 Q Could you read to the jury what those specimens were?

13 A Pulled head hair, head combings, pulled pubic hair
14 and pubic combings.

15 Q And again, with Bernadette Brandon, do you have
16 that report with you, Mr. Crow?

17 A Yes, I do.

18 Q And could you read the specimens that were given to --
19 was that given, that given to Harold Messler?

20 A Yes, they were.

21 Q Could you read the specimens given to Harold Messler
22 through the rape kit?

23 A Pulled head hair, head combings, pulled pubic hair
24 and pubic combings.

25 Q Now, have you ever done any hair test yourself or

1 examination of hair samples?

2 A Yes, I have.

3 Q And in those examinations of comparing the hair
4 samples given to you in a rape kit, what specifically are you
5 looking for?

6 A Hair that is not that of the victim.

7 Q Now, did you have any report or summary of an
8 examination done on any hair by Lonnie Erby with you today?

9 A On his -- actually on his hair, I'm not --

10 Q Or any hair samples given to you or taken pursuant
11 to any order from Lonnie Erby?

12 A Yes, there were.

13 Q And what were those hair samples?

14 A They were pulled head hair and pulled pubic hair.

15 Q And was there any examination done on the pulled
16 head hair, pubic hair, head combings or pubic combings from
17 either Vadie Vaughn, Bernadette Brandon or Kimberly Porter?

18 A There were tests run on the hair samples on all three
19 victims.

20 Q And was there any examination done in reference to
21 hair pulled from Lonnie Erby, from his pubic hair or from
22 his head?

23 A There was not, no.

24 Q And what's the reason for that?

25 A During the examination of the victims' hairs there

1 were no hairs found in the combings that were not consistent
2 with having come from the victims themselves, that is there
3 were no hairs found that were not the victims' hairs.

4 Q When was that test done?

5 A Let's see, on Kimberly Porter, it was done on 5-27-86.

6 Q How about Bernadette Brandon?

7 A Bernadette Brandon, it was 5-28-86.

8 Q And how about on Vadie Vaughn?

9 A 5-28-86.

10 Q So were there any results from any hair tests, Mr.
11 Crow, from examining those records?

12 A Yes, there were.

13 Q And what were those results?

14 A That no foreign hair, that is no hair not that of
15 the victim were found in the pubic or head combings of any of
16 the three women.

17 MR. OCHS: I have nothing further.

18 REDIRECT EXAMINATION

19 QUESTIONS BY MR. RANDALL:

20 Q And then since they didn't find, since Mr. Messler
21 didn't find any foreign hairs from any of the victims,
22 then he doesn't even bother looking at Lonnie Erby's hair,
23 he knows their hair, there were no foreign hairs on them?
24 That's why Mr. Messler didn't -- Mr. Erby's hair were not
25 examined, an examination of his hair couldn't possibly have

1 come up with anything because of the hair that was in their
2 combings was all their own?

3 A Yes.

4 Q Okay. And just so -- I want to clear up any confu-
5 sion if there is any. The jacket, Kimberly Porter's blue
6 jacket, this stain were found human spermatazoa?

7 A Yes.

8 Q That only comes from a man?

9 A Yes.

10 Q Okay. Now, you do hair testing yourself, don't you?

11 A Yes, I do.

12 Q And you're familiar with what characteristics you
13 look for to compare, to decide whether a hair is consistent
14 with or inconsistent with another hair?

15 A Yes.

16 Q Okay. Would you call it -- how long have you been
17 with the lab?

18 A Eleven years.

19 Q Based on your experience over those eleven years,
20 would you say it's common or uncommon or could you characterize
21 the frequency of which you found foreign hairs in the hairs
22 of a rape victim?

23 MR. OCHS: Objection, Judge, irrelevant, beyond the
24 scope of cross-examination.

25 Q (by Mr. Randall) The hairs that were examined and

1 the hairs that were taken from the defendant, that was done
2 at my request, wasn't it?

3 MR. OCHS: Judge, it's irrelevant, beyond the scope
4 of cross-examination.

5 THE COURT: Be overruled.

6 A Hair examination is not done unless someone requests
7 it. Ninety per cent of the time or more it is at the request
8 of the Circuit Attorney's Office.

9 Q In this case you personally don't know?

10 A In this case I'm -- I don't know who requested it.

11 Q You said on cross-examination the stain on the
12 jacket could only have been caused by thirty-three per cent
13 of the population?

14 A Yes.

15 Q And the defendant is among that same thirty-three
16 per cent?

17 A Yes.

18 Q And the fluid from the vaginal swab taken from
19 Vadie Vaughn could only have come from fifty per cent of the
20 population?

21 A In the case of the vaginal swab, that's correct.
22 The anal swab, we were not able to do a typing.

23 Q Okay. In the case of that vaginal swab, fifty per
24 cent of the population and this defendant is among that fifty
25 per cent also?

1 A Yes.

2 MR. RANDALL: Nothing further.

3 MR. OCHS: Just one question.

4 RECROSS-EXAMINATION

5 QUESTIONS BY MR. OCHS:

6 Q Do you know whether or not Mr. Randall and I had
7 any discussion about taking of this hair test?

8 A Pardon?

9 Q Do you know whether Mr. Randall and I had any
10 discussions prior to those hair samples being submitted to
11 the lab? ↗

12 A No, I do not.

13 MR. OCHS: I have nothing further.

14 THE COURT: May the witness be excused?

15 MR. RANDALL: Yes.

16 THE COURT: Will you step to the side here?

17 (A discussion was had off the record.)

18 (At 4:07 p.m., the hour of adjournment having arrived,
19 the jury, being duly admonished by the Court per Instruction
20 No. MAI-CR 1.08, by agreement is allowed to separate for
21 the night, until 9:15 A.M., Thursday, the 12th day of June,
22 1986, at which time, the further following proceedings
23 were had out of the hearing and presence of the jury:)

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25 THURSDAY, JUNE 12, 1986