

## WEDNESDAY MORNING SESSION

JUNE 26, 1991

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THE COURT: Good morning,  
ladies and gentlemen.

Call your next witness.

MR. DOBECK: Thank you, your  
Honor. The State calls Dale Laux.

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THEREUPON, the State of Ohio, to  
further maintain the issues on its part  
to be maintained, called as a witness,  
DALE LAUX, who, being first duly sworn,  
was examined and testified as follows:

THE COURT: When you  
testify, speak loudly and distinctly,  
will you do that?

THE WITNESS: Yes.

THE COURT: State your full  
name and spell your last name for the  
record.

THE WITNESS: Dale Laux,  
L-a-u-x.

1                    ---oOo---

2                    (Thereupon, State's Exhibit 23  
3                    was marked for identification  
4                    purposes.)

5                    ---oOo---

6  
7                    DIRECT EXAMINATION

8  
9                    BY MR. DOBECK:

10                   Q.        Mr. Laux, are you presently employed?

11                   A.        Yes, sir.

12                   Q.        By whom and in what capacity?

13                   A.        With the Ohio Bureau of Criminal  
14                   Investigation. Investigation and forensic  
15                   research scientist.

16                   Q.        How long have you been -- is that the lab  
17                   that's commonly known as BCI?

18                   A.        Yes, sir.

19                   Q.        How long have you been with BCI?

20                   A.        Eleven years.

21                   Q.        And now, could you please state for us  
22                   some of your educational qualifications for an  
23                   investigator?

24                   A.        I have a Bachelor of Science Degree in  
25                   Biology from Heidelberg College, and a Master

1 of Science Degree in Biology from Ohio State  
2 University. And I have had quite extensive  
3 training in the area of forensic science. I  
4 could go further if you want.

5 Q. If you would, please.

6 A. I attended the FBI Academy in Quantico,  
7 Virginia, on three different occasions. Two of  
8 the courses that I took were analysis of blood  
9 stains and semen and one of the courses was on  
10 the education and comparison of hairs and  
11 fibers. I had advanced training in forensic  
12 microscopy from Walter McCrone's Laboratory in  
13 Chicago, Illinois.

14 Advanced training in serology, which is  
15 the study of blood and semen from the  
16 Serological Research Institute in Emeryville,  
17 California. Advanced training in blood  
18 analysis from the Illinois Department of Law  
19 Enforcement. And I have attended schools and  
20 workshops at the American Academy of Forensic  
21 Scientists and the Midwest Association of  
22 Forensic Scientists, two groups that I have  
23 belonged to.

24 Q. As I understand it, you also, Mr. Laux,  
25 teach in the area of forensic science?

1 A. Yes.

2 Q. Could you give us an overview of that  
3 experience, please?

4 A. I presented a workshop on luminol, which  
5 is a chemical used in identifying blood stains,  
6 at the Midwest Association of Forensic  
7 Scientists. A workshop in electrophoretic  
8 analysis of blood and semen. Also for the  
9 Midwestern Association of Forensic Scientists.  
10 Myself and a partner I worked with presented a  
11 blood analysis workshop on several occasions  
12 for officers in the State of Ohio.

13 Q. You have received awards from the State  
14 of Ohio?

15 A. Yes.

16 Q. What would those be?

17 A. I was named Peace Officer of the Year for  
18 1988 by the Ohio Prosecuting Attorneys  
19 Association.

20 Q. And I take it then, Mr. Laux, you have  
21 testified as an expert in court before?

22 A. Yes.

23 Q. Approximately how many times?

24 A. Between 130 and 150 times.

25 Q. And if you could, please, outline some

1 duties and functions that you have with the BCI  
2 lab in Richfield.

3 A. As a forensic scientist, I have worked  
4 largely in the laboratory. Occasionally I go  
5 out to the crime scenes. I have analyzed blood  
6 stains and semen. These are material I usually  
7 work with on all sorts of crimes, felonious  
8 assault, homicide, all sorts of criminal cases  
9 that come in that are brought to us by the  
10 sheriff's departments and the police  
11 departments in the State of Ohio.

12 Q. And you're familiar then with the various  
13 procedures, various tests that are run in a  
14 rape kit?

15 A. Yes.

16 Q. Approximately how many rape kits have you  
17 worked on in your eleven years with BCI?

18 A. Thousands.

19 Q. Now, Mr. Laux, did you ever -- first of  
20 all, there is a Detective Robert Laux from the  
21 City of Brook Park Police Department. Any  
22 relationship at all?

23 A. No.

24 Q. Thank you. Did you take part in the  
25 examination of evidence from a one Brian.

1 Piszczek and Janet Quelette?

2 A. Yes.

3 Q. When did you become involved in this?

4 A. September 13th, 1990, when the initial  
5 submission came into their laboratory in  
6 reference to this case.

7 Q. When you refer to the initial submission,  
8 could you tell us what you received and how it  
9 was that it came to your attention?

10 A. It was a sex crime kit from the victim  
11 and also one from the subject, brought into the  
12 laboratory. And the victim's bathrobe,  
13 nightgown and a plaid blanket, all of the items  
14 were brought in on this date.

15 Q. Once you received that information in  
16 this submission, what is it that you did then,  
17 what tests did you run on the articles brought  
18 to you?

19 A. The kit was examined for the presence of  
20 seminal fluid and the clothing also was  
21 examined for the presence of seminal stains and  
22 trace evidence, hair and fibers.

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(Thereupon, State's Exhibit 24  
was marked for identification  
purposes.)

---oOo---

Q. Mr. Laux, showing you what has been  
marked for identification as State's Exhibit  
24, can you identify that box, please?

A. Yes, sir. This is the sex crime kit  
identified with our BCI number and item number.  
And my initials and date appears on the box.

Q. That is the rape kit?

A. Yes.

Q. That pertains to the victim in this case?

A. Janet Quelette.

Q. That in fact is the rape kit that you  
conducted all the analysis in preparation to  
testify here today?

A. Yes.

Q. Is contained in that -- am I correct,  
this states that contained in the rape kit were  
vaginal and anal swabs?

A. Yes.

Q. And what did you do when you received it,  
the vaginal and anal swabs in the rape kit?

A. I initially examined it with a chemical

1 reagent to see if semen is present. This turns  
2 the chemical purple. And in this case it was  
3 positive. I then examined the vaginal smears  
4 that were also in the rape kit, microscopic-  
5 ally, and stained those. Looked at them with a  
6 microscope and saw the presence of spermatozoa.

7 Q. Did you discover the presence of  
8 spermatozoa on both the vaginal and anal swabs?

9 A. The vaginal and anal smears were made by  
10 those swabs.

11 Q. Now, with respect to those, to your  
12 examination, microscopic examination, could you  
13 give us an idea where there was a higher  
14 concentration of spermatozoa as between the two  
15 swabs?

16 A. Yes. A great deal more spermatozoa was  
17 found on the vaginal swab than on the rectal  
18 swab.

19 Q. There are no allegations of anal  
20 penetration or anal intercourse here. Can you  
21 explain the fact that spermatozoa appeared on  
22 the smear that was taken from the anus?

23 MR. McDONNELL: Objection.

24 THE COURT: Overruled.

25 A. Yes.



1 Q. If you would, please.

2 A. One possible explanation is, it has  
3 occurred, this would not be the first time,  
4 where vaginal intercourse perhaps has taken  
5 place and then the patient puts on her clothing  
6 and is transferred to the hospital. Some time  
7 between the assault and when she gets to the  
8 hospital and is examined, there is leakage from  
9 the vagina. The seminal fluid could be located  
10 around the rectal area. In doing swabs of that  
11 area, that could be the source for that seminal  
12 fluid.

13 Q. Now, Mr. Laux, are you able to, based on  
14 the seminal fluids alone, are you able to first  
15 analyze and test the blood groups?

16 A. Yes, sir, I was.

17 Q. Incidentally, did you receive a sample of  
18 the blood type from the victim, as well as the  
19 blood type from the defendant?

20 A. Yes, I received their blood samples.

21 Q. Those were given independently from the  
22 rape kit, is that correct?

23 A. Yes, that's correct. I'm sorry, the  
24 blood sample may have been from the rape kit --  
25 no, you're right, the sample from the victim

1 and the subject were submitted separately.

2 Q. And you are able to give or discover the  
3 blood type of the victim, Janet Quelette?

4 A. Yes.

5 Q. What blood groups did they belong to?

6 A. She's a type A secreter. A secreter  
7 refers to the fact that she secretes more blood  
8 substances in secretions such as vaginal  
9 secretions, perspiration and saliva. And the  
10 term "non-secreter" implies or refers to the  
11 fact that a person that's a non-secreter would  
12 not secrete the blood group substances in  
13 detectable levels in those secretions.

14 Q. So just so that we are clear on this, the  
15 defendant wasn't a secreter; and a secreter, if  
16 you have a sample of a secreter's saliva or  
17 vaginal fluid, blood groupings can be  
18 detected from that?

19 A. That's correct.

20 MR. McDONNELL: Objection.

21 THE COURT: Sustained.

22 Approach the bench.

23 ---oOo---

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1 (Thereupon, side bar conference  
2 was had off the record out of the  
3 hearing of the jury.)

4 ---oOo---

5 MR. DOBECK: I will withdraw  
6 that previous question, your Honor.

7 BY MR. DOBECK:

8 Q. Mr. Laux, again, speaking of the bodily  
9 fluids of a secreter, be it saliva,  
10 perspiration or vaginal fluid, based on your  
11 experience and a reasonable degree of medical  
12 and scientific certainty, is it fair to say  
13 that those fluids --

14 MR. McDONNELL: Objection.

15 THE COURT: Sustained.

16 Q. Based on a reasonable degree of  
17 scientific certainty, Mr. Laux, can you type  
18 blood groups from the body fluids of a  
19 secreter?

20 A. Yes.

21 Q. Based on medical -- based on a reasonable  
22 degree of scientific certainty, can you do that  
23 with a non-secreter's bodily fluids?

24 A. No.

25 Q. Did you examine the bodily -- excuse me

1 -- semen that was found in Janet Quelette, to  
2 try and determine the blood group on that?

3 A. Yes.

4 Q. What was the conclusion?

5 A. I determined the presence of types A and  
6 H blood group substances.

7 Q. You have indicated that the blood group  
8 from the nightgown that you tested was AH,  
9 also, is that correct?

10 A. Includes the sample, yes.

11 Q. The blood samples of the defendant, could  
12 you tell what your findings were as to them?

13 A. Yes.

14 Q. Please do.

15 A. He was B non-secreter.

16 Q. In other words, as a non-secreter, based  
17 on a reasonable degree of scientific certainty,  
18 as a non-secreter, he would, based on his  
19 semen; based on his perspiration and based on  
20 his saliva and based on his bodily fluids, you  
21 could conduct a test of his group from that, is  
22 that correct?

23 A. That's correct.

24 Q. So hypothetically, Mr. Laux, if you were  
25 to have a test tube of his semen, could you

1 tell, and that's all you had, a test tube of  
2 his semen, could you tell what his blood group  
3 was from that?

4 MR. McDONNELL: Objection.

5 THE COURT: Sustained.

6 Q. Based on a reasonable degree of  
7 scientific certainty, if you were to have a  
8 test tube of his semen, only, can you tell what  
9 blood group he was?

10 MR. McDONNELL: Objection.

11 THE COURT: Overruled. You  
12 may answer.

13 A. Yes, I could -- I'm sorry, no, I could  
14 not.

15 Q. I will repeat the question so you can  
16 answer it again.

17 Based on a reasonable degree of  
18 scientific certainty, if you had a test tube of  
19 his semen, as a non-secreter, could you type  
20 his blood group?

21 A. No, sir.

22 Q. And, Mr. Laux, showing you what has been  
23 identified as State's Exhibit 23, can you  
24 identify those two documents, please?

25 A. Yes, I can.

1 Q. If you would.

2 A. It's a copy of the report that I prepared  
3 in reference to this case, dated February 28th,  
4 1991.

5 Q. And in speaking now to the first page of  
6 State's Exhibit 23, does that memorialize your  
7 finding that you just testified to today?

8 A. Yes, sir.

9 Q. It indicates that she is AH and he is a B  
10 blood grouping?

11 A. Yes.

12 Q. She is a secreter and he's a  
13 non-secreter?

14 A. That's correct.

15 Q. Is that a true and accurate copy of the  
16 report as you prepared it?

17 A. Yes, sir.

18 Q. Now, the fact that you were able to type  
19 the semen from the smear, is that consistent  
20 with the victim's blood?

21 A. The substance I detected on the vaginal  
22 swab and the anal swab were consistent with the  
23 substances of the victim, yes.

24 Q. In fact, again, based on a reasonable  
25 degree of scientific certainty, if you had

1 found semen in Janet Quelette, would you be  
2 able to type the blood type --

3 MR. DOBECK: Strike that.

4 Q. Again, with a reasonable degree of  
5 scientific certainty, the fact that you found  
6 semen in the victim, you were unable to type  
7 the blood type of the defendant because he's a  
8 non-secreter; is that consistent with the  
9 defendant having been the one that committed  
10 these crimes?

11 MR. McDONNELL: I object to  
12 that.

13 THE COURT: Sustained.

14 Q. In fact, you could not type what the  
15 group was, other than AH, which is consistent  
16 with the victim's, correct?

17 A. Yes.

18 Q. Is it also consistent that a non-secreter  
19 was the person that left the semen there?

20 MR. McDONNELL: Objection.

21 THE COURT: Overruled.

22 A. That is consistent with not finding any  
23 other blood group substances.

24 Q. And then, finally, Mr. Laux, let me ask  
25 you about other procedures that were run, some

1 of the other procedures that were in the rape  
2 kit. For instance, the fingernail scrapings.

3 A. Yes.

4 Q. Can you tell us your findings with regard  
5 to the fingernail scrapings?

6 A. There was nothing of evidential value  
7 that was observed.

8 Q. A pubic combing was done on the victim,  
9 is that correct?

10 A. Yes.

11 Q. Could you tell us what you found with  
12 respect to your finding, with respect to your  
13 pubic comb?

14 A. I found one light brown pubic hair which  
15 was consistent with the pubic hair from the  
16 victim.

17 MR. DOBECK: Just one  
18 moment, please, your Honor.

19 Thank you, nothing further.

20 THE COURT: Mr. McDonnell?

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## CROSS-EXAMINATION

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BY MR. McDONNELL:

Q. I am going to ask you a series of questions. If at any time you don't understand the question, please ask me to repeat it, okay?

A. Yes.

Q. Would it be fair to say that on all the tests that you did, there is nothing to connect the defendant to this crime?

A. Yes.

Q. Now, you did say that you were provided with samples of pubic hairs, correct?

A. From the victim, yes.

Q. Were you provided with samples from the defendant?

A. No, sir.

Q. How many pages is your report?

A. Two.

Q. How many pages did you just look through?

A. I looked for the submission sheets, not my report.

Q. So -- I'm sorry, I'm thinking of something else that answered that question.

You were not given anything from the

1 victim in terms of pubic -- any type of hair  
2 from the victim?

3 A. No, from the victim I was --

4 Q. From the victim, yes. But not from the  
5 defendant?

6 A. That's correct.

7 Q. However, if, in the combing of the pubic  
8 hairs that were given to you, which were the  
9 result of combing the victim's pubic hairs, you  
10 found one pubic hair that was not consistent  
11 with the rest, is that --

12 A. No, I found one pubic hair in the  
13 combings and that was consistent with her  
14 standard which was collected from her.

15 Q. Was that done microscopically, to  
16 compare?

17 A. Stereomicroscope, yes.

18 Q. What does that mean?

19 A. It's a fancy magnifying glass giving a  
20 magnification of perhaps 10 to 20x.

21 Q. You would say it was consistent with, but  
22 you couldn't say it definitely was her hair?

23 A. That's correct.

24 Q. Based upon that fact that you could say  
25 -- you couldn't say for sure it was her hair?

1 A. That's correct.

2 Q. Did you ever think, maybe it would have  
3 been proper to take a pubic hair sample from  
4 the defendant?

5 A. No.

6 Q. Did you not do that?

7 A. I did not request that.

8 Q. You found nothing of significance in the  
9 evidence that was presented to you that said  
10 that it was taken from underneath the  
11 fingernails?

12 A. Correct.

13 Q. Therefore, you did not test it or do some  
14 tests on it?

15 A. Visual exam. Really nothing there to  
16 test, other than the nails.

17 Q. There was only nails, there was nothing  
18 else underneath?

19 A. Correct.

20 Q. Could you have done a microscopic  
21 examination if you had so wanted?

22 A. Those were examined with a  
23 stereomicroscope.

24 THE COURT: Just answer yes  
25 or no, sir.

1 A. Could I do that then? Yes.

2 Q. I thought you said you just did a visual  
3 examination with the eye.

4 A. With a microscope.

5 Q. Okay. Now, is there a test known as a  
6 chromosome variant analysis, correct?

7 A. I'm not aware of that.

8 Q. You are not aware of that? How about a  
9 study that linked defendants with the victim,  
10 with a test comparing the DNA?

11 A. Yes.

12 Q. That's been done before?

13 A. Correct.

14 Q. And it's really reliable, correct?

15 A. Yes.

16 Q. Very reliable, those tests, correct?

17 A. My understanding, yes.

18 Q. You could have done those tests in this  
19 instance, correct?

20 A. Not in our laboratory, no, I could not.

21 Q. Your laboratory maybe couldn't have done  
22 it. There are laboratories in the United  
23 States that could do that, correct?

24 A. Yes.

25 Q. And obviously your laboratory didn't do

1 it, since you didn't have the capabilities?

2 A. Correct.

3 Q. And you didn't send it to any other  
4 laboratory that does have the capabilities to  
5 conduct a DNA analysis, therefore it wasn't  
6 done, correct?

7 A. Correct.

8 Q. And you have no scientific evidence to  
9 connect this defendant, Brian, to this crime  
10 whatsoever?

11 A. There is, other than seminal fluid,  
12 nothing that ties him in, like fingerprints.

13 Q. You can't say ties him in at all, can  
14 you?

15 A. Well, no. There is semen there, but I  
16 limit it down to males. Other than that, no.

17 Q. Limited to all the males in the United  
18 States?

19 A. That had access to the victim on this  
20 particular day.

21 Q. No further questions.

22 THE COURT: Anything  
23 further?

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## REDIRECT EXAMINATION

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BY MR. DOBECK:

Q. Briefly, following Mr. McDonnell's questions, you said you have no scientific evidence to tie him to it, but on the other hand, because he is a non-secreter, he cannot be excluded, either, is that correct?

A. That's true.

Q. And with respect to the pubic hair, that pubic hair coming, you said you found one hair that was consistent with her hair, the victim's hair, correct? Are you aware there was a six-week delay from the day of the crime alleged to have occurred and the date that the defendant was arrested?

A. No. I was aware of a time period between when the assault occurred and when the rape kit came in. I was unaware there was a time difference between when the defendant was arrested.

MR. DOBECK:                      Nothing  
further, your Honor.

THE COURT:                      Anything  
further?

1 MR. McDONNELL:

No, your Honor.

2 THE COURT:

Thank you. You

3 may step down.

4 ---oOo---

5 (Witness excused.)

6 ---oOo---

7 THE COURT:

Call your next

8 witness.

9 MR. DOBECK:

The State will

10 call Sandy Jo Preston.

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