

1 1993, for the lawyer to make every effort to obtain the bench
2 notes, the documentation that you were describing to Mr. Burt
3 earlier in order to permit you to assist that lawyer in review-
4 ing the evidence, the foundation for it and to prepare to
5 address the issues being raised by the serological results?

6 A] Yes.

7 MR. PHILLIPSBORN: Thank you. Thank you, Your
8 Honor.

9 THE COURT: Mr. Davis?

10 MR. DAVIS: No further questions.

11 THE COURT: All right, Ma'am, you may stand down.
12 You're excused from the Rule and free to go.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 THE COURT: Are you going to let Mr. Channell go?

16 MR. DAVIS: I'm assuming that they are finished
17 with their experts.

18 MR. BURT: Done for the day, there will be no
19 further experts for the rest of this day. He did make
20 reference to one page in his lab notes, uh, which we
21 didn't have and I'd like to add to my exhibits and
22 make a copy.

23 THE COURT: That will be fine. I've got a
24 question or two, if you want to take the stand again.

25 (WHEREUPON,

1 KERMIT CHANNELL, Serologist

2 was recalled as a witness by and on behalf of the Court and
3 having been duly sworn, was examined and testified as follows,
4 to-wit:

5 DIRECT-EXAMINATION

6 BY THE COURT:

7 Q] Were you called upon to examine an article of clothing,
8 particularly, a necklace during the course of the trial?

9 A] Yes, Your Honor.

10 Q] And the Court struck that item of physical evidence from
11 testimony, over the objection - - at the request of the defense
12 lawyers. What were your findings?

13 A] Basically, it was a necklace that was submitted which I
14 identified blood on.

15 Q] All right. And what did you do with that exhibit, uh, the
16 fact that you found blood. What did you find, specifically?

17 A] On that particular item, I sent the samples to Genetic
18 Design for DNA testing.

19 Q] All right. What were the results of their findings?

20 A] They obtained a DNA profile from the necklace consistent of
21 a mixture and on that item they conducted HLA and DQ-alpha test-
22 ing which disclosed a two-three DQ-alpha type and a faint 1.24.
23 The two-three was consistent with Damien Echols' genetic type at
24 that location; the 1.24 was consistent with the DNA type from
25 Steven Branch and also was consistent with the DNA type from

1 Jason Baldwin.

2 Q] Any further questions?

3 MR. PHILLIPSBORN: Yes, Your Honor.

4 THE COURT: All right. Gentlemen, we brought
5 this up the other day, and the reason the Court struck
6 that evidence is because it would have required a
7 mistrial for one of the defendants.

8 It seems to me that this is significant evidence
9 that the lawyers were skillful enough to exclude, so
10 that's the reason I'm bringing it up at this point.

11 MR. PHILLIPSBORN: Thank you for clarifying that,
12 Your Honor.

13 CROSS-EXAMINATION

14 BY MR. PHILLIPSBORN:

15 Q] Mr. Channell, did you have any advance notice you were
16 going to be asked those questions?

17 A] The only advance notice that I had was a little while ago.

18 THE COURT: I asked him.

19 CROSS-EXAMINATION BY MR. PHILLIPSBORN, continuing:

20 Q] And, and, uh, you were, uh, it appears that you were making
21 reference to some documentation or documents during your
22 testimony. Am I correct in characterizing that?

23 A] Yes, sir, you are.

24 Q] For the record, would you be kind enough to identify what
25 you were referring to?

1 A] I'm referring to is a - - the cover letter is from West
2 Memphis Police Department; the secondary letter I was referring
3 to was a report generated by Genetic Design, with the subject,
4 the next page of it was basically my submission dated March 11,
5 1994 to Genetic Design, with the item of evidence. There is
6 also attached a billing fee and the forensic case report issued
7 by Genetic Design.

8 MR. PHILLIPSBORN: And, and just, just so we
9 clarify the case's record, also on the context of the
10 case, Your Honor...

11 CROSS-EXAMINATION, continuing:

12 Q] ...this is, the evidence that you make reference to is
13 evidence that the State of Arkansas and the Arkansas Crime
14 Laboratory has had in its possession since 1993 when it was
15 booked into evidence; right?

16 A] We have had the actual necklace - - I'm not sure when it
17 came to our laboratory. It didn't come initially.

18 Q] Wasn't the, part of the significance of it that, uh, it was
19 said to have been booked into evidence from one of the
20 defendants in this case. Do you recall that?

21 A] I don't recall.

22 Q] Since the, uh, at the, uh, at the time of this case, 1993,
23 uh, what was the preferred method, well, what was considered to
24 be the scientifically reliable method to identify blood, uh, to
25 identify blood?

1 A] Phenol saline was the screening process, but to confirm
2 that was a medico takayama for Kastle-Meyers.

3 Q] And then, to further attempt to identify the blood source,
4 once you'd identified that the substance had human blood and
5 could be associated with a human, what other refinements could
6 be made at terms of identification?

7 A] Depending on the quantity of the sample, you could do
8 enzyme testing, you could do ABO typing, uh, and actually get
9 also the blood sample from that; again, all depending on the
10 sample size you have to deal with. In lieu of that, PCR-DNA
11 testing.

12 Q] And PCR-DNA testing would yield, uh, results that, for
13 example, might not be able to differentiate between two
14 individuals; right?

15 A] Depending on the test, that's always possible, but I
16 believe at the time is the best technique to either include or
17 exclude someone as being the source of that DNA.

18 Q] And, and so, for example, let's say the results you were
19 summarizing for the Court, came back, uh, would you agree that
20 one of the things that might happen when these results come back
21 is that it might be - - I'm talking about the combination of
22 your presumptive testing of your identification of the substance
23 of blood, and then the DNA laboratory results - - would you
24 agree that, uh, there were discussions that could be had among
25 qualified and competent criminalists and DNA experts that about

1 some possible additional strategies to employ to see if further
2 refinements would be possible in the identification process?

3 A] In that time period, in 1993, I believe the DQ-alpha DNA
4 testing component was probably the best thing available, based
5 on the sample size, as well as do you want to say do you require
6 more samples?

7 Q] And, and I, I apologize because I wasn't being particularly
8 artful; for example, somebody who had some basic knowledge of
9 laboratory sciences might have been able to use the raw results
10 obtained during the course of the DQ-alpha testing process to
11 refute, for example, the laboratory cut-offs being used, the
12 standards being employed, the methods, the protocols, to see
13 first of all whether a reliable test result had been obtained?

14 A] Correct.

15 Q] And, and so, uh, assuming - - and this is in line of the
16 Court's questions - - assuming that a person were confronted
17 with conclusory information, let's say, a letter that specified
18 the results were as you stated them. That person could have
19 actually then said, "I'd like the lab documentation; I'd like to
20 verify whether in fact the contents of your letter are supported
21 by your documentation"; correct?

22 A] That's correct.

23 MR. PHILLIPSBORN: Nothing further. Can I see
24 the report that he is referencing?

25 THE COURT: Yes.

1 MR. PHILLIPSBORN: Thank you.

2 THE COURT: For the record, the State wanted to
3 introduce this evidence, and I prohibited them from
4 doing it, because it would have required a continuance
5 to get the laboratory witness here, plus it was kind
6 of cross-implicating, and for that reason I disallowed
7 it.

8 MR. PHILLIPSBORN: I, I understand that, and I
9 was respectfully addressing the Court's point about
10 the significance of this evidence.

11 I, I think the Court made a ruling, clearly, that
12 it was very advantageous for the Defense, but I, I was
13 addressing the Court's point that the lawyers ably
14 handled this particular issue.

15 THE COURT: They kept it out.

16 MR. PHILLIPSBORN: Well, the Court kept it out,
17 so I appreciate the Court's point. Could I have one
18 moment?

19 (Pause.)

20 THE COURT: Yes.

21 MR. PHILLIPSBORN: Your Honor, would the Court
22 indulge on this specific issue - - I, I realize that
23 the point may have been made, but...

24 CROSS-EXAMINATION BY MR. PHILLIPSBORN, continuing:

25 Q] ...Mr. Channell, uh, relying on, on your expertise at this

1 point, in the DNA arena, essentially after this, after your
2 work, your serological work at the time that had been done, the
3 material gets passed to the DNA lab and then the lab reports
4 back its results; first, the lab is, is explaining - - and I'm
5 going to be pretty basic here - - we've got a mixed stain;
6 right?

7 A] Yes.

8 Q] We've got several potential contributors to what, to what
9 seems to be a stain, uh, that contains human DNA; correct?

10 A] Correct.

11 Q] And, uh, at, at the time, and part of, uh, the DNA testing
12 process would yield pairings of, would yield information about
13 pairings of alleles that make up human DNA; correct?

14 A] Correct.

15 Q] And what the, the DNA testing system at the time permitted
16 was, uh, a, a definition within the framework of the DQ-alpha
17 testing process and methodology, uh, the identification of
18 alleles using that particular testing system; correct?

19 A] Correct.

20 Q] Uh, and for example, uh, there are results that come back,
21 and as you say, uh, show allele pairings consistent with Steve
22 Branch on the one hand, and Jason Baldwin on the other; correct?

23 A] Correct.

24 Q] And, uh, those pairings may also apply to a large percent-
25 age of the population; correct?

1 A] Correct.

2 Q] So, uh, again, if, if you, uh, if, if a person who had at
3 least some basic knowledge of the DNA technology involved, is
4 looking at that information, uh, the discussion that you and I
5 just had is a discussion you could have about the significance
6 of those DNA results; correct?

7 A] Correct.

8 MR. PHILLIPSBORN: I have, uh, I have nothing
9 further.

10 THE COURT: Anything else?

11 MR. DAVIS: No, sir.

12 THE COURT: Anything?

13 (No response.)

14 THE COURT: All right, Kermit, you're free to go,
15 I suppose. Is that it?

16 (No response.)

17 (Witness excused.)

18 THE COURT: All right, call your next witness.

19 MR. BURT: Mr. Crow; I want to make sure he's
20 here.

21 THE BAILIFF: He's out in the hallway.

22 MR. PHILLIPSBORN: Thank you, Mr. Channell.

23 THE COURT: Did one of y'all ask him to submit
24 that last portion of that report?

25 MR. BURT: Uh, Your Honor, I'd ask that we be

1 allowed to copy a couple of pages that he does make
2 reference in his examination and I'd like to have for
3 my exhibit.

4 THE COURT: Okay. Did anybody offer it? I don't
5 remember.

6 MR. BURT: They did offer it.

7 MR. DAVIS: Are you talking about the pages of
8 the analysis?

9 MR. BURT: Yes.

10 THE COURT: No, I was talking about the last
11 report that I questioned him about. I thought you
12 asked for a copy of that?

13 MR. BURT: No, I asked to look at it. I think
14 Mr. Phillipsborn cleared it up, so I didn't request
15 it.

16 THE COURT: All right, that's fine.

17 THEREUPON,

18 GREGORY L. CROW

19 was called as a witness by and on behalf of the Defendant/
20 Petitioner and having been duly sworn, was examined and testi-
21 fied as follows, to-wit:

22 DIRECT-EXAMINATION

23 BY MR. BURT:

24 Q] Would you state your name again for the record, please?

25 A] Gregory L. Crow.