

1 Q When you arrived, who was present?

2 A Damien Echols, Jason Baldwin, Damien's sister -- I don't
3 remember her name -- and Domini Teer.

4 Q How did you come into possession of the boots?

5 A When I arrived there, I placed both Jason and Damien under
6 arrest and when we were leaving, Jason said that those were his
7 boots, at which time I told him I was going to confiscate
8 those.

9 Q Would you open the sack?

10 A (COMPLIES)

11 Q You can replace them back in the sack.

12 A (COMPLIES)

13 MR. FOGLEMAN: I do want to offer State's Exhibit
14 90.

15 MR. STIDHAM: Your Honor, we ask that you note
16 our previous objection to relevancy.

17 THE COURT: Overruled and they may be received.

18 (STATE'S EXHIBIT 90 IS RECEIVED IN EVIDENCE)

19 (WITNESS EXCUSED)

20 (RECESS)

21 (THE FOLLOWING CONFERENCE TOOK PLACE IN CHAMBERS)

22 THE COURT: Let the record reflect this is a
23 hearing out of the presence of jury. Let the record
24 also reflect that the witness Michael DeGuglielmo is
25 present.

1 MR. CROW: Your Honor, we've been speaking with
2 the witness about the evidence he's getting ready to
3 submit. My understanding is there was some cuttings
4 from jeans of one of the victims -- one or more --

5 MR. FOGLEMAN: I think there were two pair of
6 pants that the cuttings were from.

7 MR. CROW: The witness will be testifying that
8 they have definitely found some DNA in the cutting.
9 The part I think we are going to be objecting to is
10 that he also I believe will be testifying that he
11 believes or there is a possibility -- I'll let him put
12 it in his own phraseology -- that that DNA in some way
13 indicates sperm. From my speaking to him, I'm not
14 convinced it meets the qualifications when he can make
15 that. He uses "believe" and "probably came from" and
16 that concerns me.

17 MR. STIDHAM: We'd also like to state that it
18 doesn't have any relevancy. As I understand it, the
19 fact that there is DNA there doesn't necessarily mean
20 that ties the defendant or any of the co-defendants to
21 anything, and I believe the purpose that the
22 prosecution is trying to introduce this is for the
23 fact that there may be semen or sperm on the pants,
24 and we would submit that in the event the Court feels
25 it is relevant, we would submit that it is highly

1 prejudicial and doesn't have any probative value.

2 THE COURT: Well, all evidence is prejudicial to
3 someone. The question is whether or not it is
4 probative and proper -- or extreme prejudice would be
5 a different matter. But certainly the presence of
6 sperm on the pants of the decedents would be relevant
7 evidence.

8 MR. STIDHAM: I don't think the witness can say
9 that with any degree of certainty.

10 THE COURT: I don't have any idea what he is
11 saying. If your objection is that he's unable to
12 testify as to the presence of sperm because of lack of
13 qualifications or because it is not a scientific
14 method that is recognized or a novel or new approach
15 to some scientific method, then maybe you have a valid
16 objection.

17 MR. CROW: It is not so much that the test isn't
18 recognized. I think if he had a proper sample, it
19 could be more valid.

20 THE COURT: That probably goes to the weight of
21 his testimony, and you can cross examine him on the
22 factual basis of any opinion he might render.

23 If he is prepared to testify that he has the
24 scientific knowledge and education in the field of
25 genetic comparisons and coupled with that education,

1 experience and ability he applied normally recognized
2 scientific tests to the submitted sample and based
3 upon his lab findings he is prepared to testify that
4 he has an opinion, I'm going to allow him to testify
5 as to what that opinion is.

6 You can challenge the basis of that for it. You
7 can cross examine him on it and it all goes to the
8 weight, not the admissibility of his testimony.

9 MR. CROW: I understand that position, but with
10 the amount of damage this could do with the jury, if
11 the jury were to believe this considering that he
12 says, "probably indicates, might indicate." That just
13 really concerns me. I don't know if it can be cured
14 on cross examination.

15 THE COURT: If it is couched in the proper terms
16 that he has an opinion based upon some scientific
17 basis and coupled with his education, he will be
18 permitted to draw those conclusions.

19 An opinion is a speculation to begin with.
20 That's the kind of speculation that an expert is
21 qualified and permitted to do.

22 I haven't heard what he's got to say, other than
23 that sketchy outline, whether or not it meets the test
24 of admissible evidence or not.

25 MR. STIDHAM: Your Honor, he's going to testify

1 that there's DNA present on these cuttings from the
2 pants of the victim. He cannot tell for sure if it
3 came from an ape, a gorilla, a baboon or a human. He
4 can't tell whether it came from blood or semen. He
5 says it is likely that it came from sperm. There
6 might have been sperm present, but he doesn't know
7 with any degree of certainty, and we think that is
8 highly prejudicial. If he could come in here and say,
9 "Yes, that is definitely semen," or "Yes, that is
10 definitely sperm" --

11 THE COURT: Well, wait a minute. What is it you
12 are prepared to testify to based upon your experience,
13 education and scientific findings?

14 THE WITNESS: There are a large number of
15 specimens here, the one that we are interested in --
16 there are actually two specimens, Q6 and Q10 which
17 were cuttings from some pants.

18 The initial information that we were given on
19 this was that they were, what I guess would best be
20 phrased as potential seminal stains. That's important
21 in our perspective because it determines how we'll
22 actually perform the extraction, the process of
23 removing the DNA from the material.

24 In any potential sexual assault specimen where
25 the possibility exists for mixed specimens we use what

1 is called a differential extraction. The purpose
2 there is to separate sperm and nonsperm components
3 from other material. So we can try to elucidate which
4 type was attributed to which component.

5 The first thing that is done with any PCR based
6 tests -- there are basically two types of DNA testing
7 -- and this because of the very small amount of
8 material to work with was a PCR based test. And that
9 is a process by which amplification of the material
10 occurs for the analysis. The first portion we do is a
11 quantitation of determining how much material is
12 there. First of all, if there is anything there and,
13 if so, how much is there.

14 With these two specimens as well as with -- we
15 had run a number of specimens, some of which are not
16 affiliated with this particular case in this
17 quantitation, and used that same quantitation for the
18 determination of the amount of DNA.

19 In this particular quantitation with this case
20 those two items show a very small, marginal amount of
21 DNA on the male fractions of those two items of
22 evidence.

23 What that interpretationally would mean is that
24 there was some DNA of human origin. As I explained
25 earlier, when we talk about speciation of DNA or any

1 other material, it is done within certain constraints
2 that are placed upon us by the actual relationship to
3 the organisms themselves.

4 When we talk about human, there is very little
5 differentiation, be it DNA or protein or blood markers
6 or what, between human beings and other higher
7 primates; specifically, gorillas, chimpanzees and
8 great apes.

9 There are vast differences between other
10 organisms. But because of that similarity and the
11 relationship, there are similarities in the DNA that's
12 present. And most of the probes you will find used in
13 DNA testing react both with great apes, chimpanzees as
14 well as humans.

15 What we know is there is DNA present on the
16 specimens that, a small amount, is from a higher
17 primate. I cannot tell you, as you said, that it did
18 not come from a chimpanzee or a gorilla if someone
19 would like to believe that. But what I can tell you
20 is it is from a higher primate.

21 The second thing I can tell you is the two
22 fractions that come from that are what we refer to as
23 epithelial, or nonsperm, and male, or sperm fractions,
24 because they represent in the prototypical sexual
25 assault case the sperm cells from a male contributor

1 and epithelial cells from a female contributor. What
2 we would expect to see is anything other than sperm
3 cells in the epithelial or nonsperm portion.

4 In this particular case we detected no DNA in the
5 epithelial or nonsperm portion of those two samples
6 and a very small amount of DNA in the male or sperm
7 portion of those two samples, the interpretation from
8 that being that there likely was a small amount of
9 sperm present on those garments.

10 THE COURT: Is that a conclusion you could draw
11 based upon your experience, training and education,
12 and is it based upon recognized scientific findings?

13 THE WITNESS: Yes, I believe so.

14 THE COURT: All right, gentlemen, what else is
15 there to object to?

16 MR. STIDHAM: You told us a moment ago before we
17 went on the record that you couldn't say for sure that
18 there were sperm present.

19 THE WITNESS: That's correct, and I can't because
20 I did not personally visually see sperm. In any
21 scientific application the only definitive way that I
22 know of that people will say there are sperm is if
23 they are visually observed under a microscope. I
24 don't feel comfortable saying for sure that there are
25 until I do. The initial screening test done in this

1 case was an acid phosphatase, and that indicates the
2 presence of semen, not necessarily even guaranteeing
3 that there are sperm cells there though.

4 THE COURT: Just the hormone.

5 THE WITNESS: That and the fluid present --
6 that's correct -- the acid phosphatase. What then is
7 done if there are sufficient specimens is to take a
8 portion of that and do a microscopic examination to
9 visually see sperm cells. That is considered
10 conclusive for there being sperm cells. I did not do
11 that. I don't believe it was done by the lab here,
12 once again because of the limited specimen.

13 So I can't tell you conclusively that there are
14 sperm cells there. I can tell you that what we see is
15 indicative of that and indicative of a very small
16 amount of it and after discussing it with Kermit
17 Channel to try to make some interpretation from the
18 results, it appeared to be consistent with their
19 findings as well and the activity that he saw with the
20 acid phosphatase. I cannot give you a definitive
21 statement. All I can tell you is what my
22 interpretation would be from what I've seen.

23 THE COURT: I'm going to allow him to testify.
24 It simply goes to the weight of his testimony, not to
25 its admissibility. You can point all these things out

1 on cross examination.

2 MR. STIDHAM: We want to make sure our objections
3 are noted that we feel this could possibly confuse the
4 jury.

5 THE COURT: That's another question. In what way
6 will his testimony elucidate or benefit or assist the
7 jury?

8 MR. FOGLEMAN: The defendant in his statement
9 described sexual type acts occurring, and this is
10 another thing to corroborate what the defendant said
11 since the defense is alleging a false confession.

12 MR. STIDHAM: Judge, the Medical Examiner said
13 there was no evidence of a sexual assault.

14 MR. FOGLEMAN: He also said he was familiar with
15 literature which indicated that you could have sexual
16 abuse and no findings.

17 THE COURT: I don't think that is what he
18 testified to, that there was no evidence of sexual
19 assault. He testified about the rectum of two of them
20 being dilated --

21 MR. STIDHAM: -- Most likely caused by the water.

22 THE COURT: Again that is a question of
23 interpreting his testimony and arguing to the jury. I
24 don't think he gave an opinion that there was no
25 sexual -- he just said he couldn't tell and didn't

1 find any sperm.

2 MR. CROW: Wasn't any damage.

3 THE COURT: Wasn't any extensive damage to the
4 inside of the rectum. Although he did testify that
5 the mouths of one or two of the boys were torn up on
6 the inside.

7 MR. FOGLEMAN: Their ears were all bruised.

8 MR. STIDHAM: But he said that could have been
9 caused by --

10 THE COURT: Again that's argument. You can
11 interpret that testimony for the jury and argue it
12 either way you choose to. I'm going to allow him to
13 testify. You can point out all the things you just
14 mentioned so I guess it is some relevant evidence that
15 possibly sperm existed in trace amounts on the
16 clothing of the two victims and this is what we call
17 trace evidence.

18 MR. STIDHAM: He can't say there's sperm. He can
19 only say --

20 MR. FOGLEMAN: He said he couldn't positively say
21 there was sperm.

22 THE WITNESS: There are a lot of ways to phrase
23 things. I certainly can -- and this happens in a lot
24 of trials -- different people wanting my words to be
25 phrased in different fashions. The bottom line is,

1 no, I can't positively tell you there are sperm, but
2 that's because I didn't see them. And the only way
3 that I or anyone else I know feels comfortable with
4 saying they are there is to see them, but that doesn't
5 mean that the results don't indicate to me that there
6 could have been sperm cells there because we see DNA
7 where we would see DNA from sperm cells.

8 (RETURN TO OPEN COURT)

9 LISA SAKEVICIUS

10 having been first duly sworn to speak the truth, the whole truth
11 and nothing but the truth, then testified as follows:

12 DIRECT EXAMINATION

13 BY MR. FOGLEMAN:

14 Q Will you please state your name and occupation?

15 A Lisa Sakevicius and I'm a criminalist at the Arkansas State
16 Crime Lab.

17 Q What education, experience and training have you had to
18 qualify you as a criminalist at the Crime Lab?

19 A I have a degree in chemistry from the University of Central
20 Arkansas. I worked as a chemist for a year at the Arkansas
21 Plant Board where I learned to use several instruments. Then I
22 started working at the lab about five and a half years ago.

23 I have been to the accelerant detection course from the
24 FBI. I've had polarized light microscopy courses from the
25 McKrohn Institute and manmade fiber identifications from McKrohn