

1 PETER DUANE DEAVER,
2 having been called as a witness and having been duly
3 sworn, was examined and testified as follows:

4 MR. WILLOUGHBY: May I approach the
5 witness, Your Honor?

6 JUDGE MANNING: Yes.

7

8

9

DIRECT EXAMINATION

10 BY MR. WILLOUGHBY:

11 Q. Would you tell us your name?

12 A. Peter Duane, D-u-a-n-e, Deaver, D-e-a-v-e-r.

13 Q. And Mr. Deaver, how are you employed?

14 A. I'm employed as an Assistant Special Agent in
15 Charge in the North Carolina State Bureau of
16 Investigation. I'm presently assigned to the Training
17 and Investigative Support Unit.

18 MR. WILLOUGHBY: Your Honor, May I
19 approach the bench?

20 JUDGE MANNING: Yes.

21 MR. WILLOUGHBY: The -- I apologize. The
22 notebooks that we get from the State only go up to 25
23 tabs and so we didn't have a place to put this one,
24 so --

25 JUDGE MANNING: I'm surprised you can

1 afford -- the State could afford one that goes to 25
2 tabs.

3 MR. WILLOUGHBY: It was on -- the Bar gave
4 us some money.

5 Q. BY MR. WILLOUGHBY: Mr. Deaver, how long have
6 you been employed with the SBI?

7 A. I think over 24 years. Since 1985.

8 Q. And what is your educational background?

9 A. I have a Bachelor of Science degree from North
10 Carolina State University in the area of zoology, which
11 was pre-med. I went to work for the SBI in December of
12 1985 and entered their serology training program. Also
13 attended the 17th SBI Academy in 1986. I believe
14 sometime during the year 1986 completed the serology
15 training program at that time.

16 I was sent in October of 1986 to begin
17 training as a bloodstain pattern analyst also. During
18 my -- the course of my career I've had many courses in
19 all kinds of areas: in serology, bloodstain pattern
20 analysis, crime scene investigations, those types of
21 things.

22 Q. Okay. Did you prepare that information on a
23 form from the North Carolina SBI that's used to --
24 called a Statement of Qualifications?

25 A. Yes, I did.

1 MR. WILLOUGHBY: May I approach, Your
2 Honor?

3 JUDGE MANNING: Yes.

4 *(State's Exhibit 27 identified.)*

5 Q. BY MR. WILLOUGHBY: I'll hand you what has
6 been marked as State's Exhibit Number 27 and ask you if
7 you recognize that?

8 A. I do.

9 Q. And is that a copy of the statement that you
10 prepared about your background?

11 A. Yes, it is.

12 Q. Over the years have you held different
13 functional responsibilities for the SBI?

14 A. I've had many different positions in the SBI
15 over the years. I left the -- the laboratory in 1993
16 and was the same -- assigned to the training unit where
17 I was there for -- till -- till the year 2000. I was
18 then assigned as a Diversion and Environmental Crimes
19 investigator. And then while doing that, I was assigned
20 by the administration of the SBI to become a
21 methamphetamine lab investigator. I then applied as a
22 supervisor of human resources and went to that job in
23 December of 2005.

24 During that time I was asked by the
25 administration again to start training as a criminal

1 profiler, and then recently I was assigned to full-time
2 capacity in that area.

3 Q. Back in 1991, were you working as a
4 serologist?

5 A. I was.

6 Q. And since that time have you also done
7 bloodstain pattern analysis?

8 A. I have. I -- I was -- I was assigned -- I was
9 assigned at the same time I was a serologist to do that,
10 which is a -- a crime scene expertise, and I was sent to
11 crime scenes all over the state of North Carolina to do
12 that and have been ever since.

13 Q. And now you're in the Behavioral Unit?

14 A. Yes, I am.

15 Q. As a serologist and bloodstain pattern
16 analyst, did you testify in court on behalf of the SBI?

17 A. I did.

18 Q. Any idea as to how many times?

19 A. I really don't remember. I've been saying
20 "over a hundred times" for a long time because I've just
21 lost track.

22 Q. And were you qualified as an expert in that
23 field of serologist and bloodstain pattern analysis?

24 A. Yes, I was.

25 Q. And have you been -- testified as an expert in

1 the behavioral analysis?

2 A. I have not.

3 Q. Okay. So today we'll focus on the serology
4 and bloodstain pattern analysis.

5 MR. WILLOUGHBY: Your Honor, I would
6 tender Agent Deaver as an expert in serology and
7 bloodstain pattern analysis and ask that he be allowed
8 to render opinions in those fields.

9 JUDGE MANNING: Admitted, and he will be
10 allowed to testify.

11 Q. BY MR. WILLOUGHBY: In September of 1991, can
12 you tell us about what your duties were at the SBI?

13 A. I was assigned, again, in the serology unit
14 and was assigned regular casework as a serologist. And
15 also, as I said before, I was a bloodstain pattern
16 analyst at the same time, so I had kind of dual function
17 duties in that I would be sent out to crime scenes. I
18 would also be asked to look in the -- in the laboratory
19 at evidence that was being sent in to -- to -- to look
20 at it for bloodstain and -- and to do analysis on that
21 in that area also.

22 I was the first person in the state that I'm
23 aware of to be trained in that area, and so I had a lot
24 of duties or responsibility to do that.

25 Q. In which area was that?

1 A. Bloodstain pattern analysis.

2 Q. And what -- what is a serologist?

3 A. A serologist is somebody who looks at items of
4 evidence for the presence of body -- body fluids, and
5 then when they're identified then types them and
6 compares them to known samples in criminal cases.

7 Q. And you, as part of your duties, did on
8 occasion go to crime scenes?

9 A. I did.

10 Q. Were you asked to go to -- why were you asked
11 to go to crime scenes as a serologist?

12 A. Well, as a serologist, we were asked -- the
13 whole serology section would have to go to crime scenes
14 from time to time to -- to assist in a -- in a team
15 effort to -- to analyze the crime scene. But the
16 majority of our responsibilities would be to do luminol
17 examinations in a crime scene as a serologist.

18 Q. And did you do that?

19 A. I did.

20 Q. And did you get asked to go to a crime scene
21 on September the 26th of 1991 on Blount Street in
22 Raleigh?

23 A. Yes, I did.

24 Q. And when you went to the crime scene, what did
25 you do?

1 A. I was -- a request came into -- to the -- to
2 the laboratory for bloodstain pattern analysis
3 assistance, and so that was what I went there to do.
4 And -- and the C- -- CCBI or City/County Bureau of
5 Identification had made that request of our laboratory,
6 and so that's why I was there.

7 Q. And when you got to the crime scene, what did
8 you do there at the crime scene?

9 A. Well, I was -- the CCBI agents who were there
10 -- when I drove up, and -- and they filled me in on what
11 was -- what they had there at the crime scene, and they
12 asked me two specific questions for me to answer for
13 them as a bloodstain pattern analyst.

14 Q. What -- what questions did they ask you?

15 A. They asked me first if -- if I could determine
16 whether we would expect blood to be on the -- the
17 perpetrators of the crime or the perpetrator, and the
18 second question was they asked if -- if I would be able
19 to determine what type of weapon was used to -- to
20 commit the homicide.

21 Q. On -- in response to the first question about
22 the expectation about blood being on the perpetrators,
23 what did you tell them?

24 A. After consideration of the bloodstains that I
25 saw there around the victim, I told them it would be my

1 opinion that they would not be able to expect that the
2 person who did that would have blood on them.

3 Q. And why did you think that?

4 A. Everything that I saw related to the victim
5 appeared to me to be that she had created all the
6 staining around her, and it was my experience that --
7 and what I thought was a -- a beating, that the person
8 probably didn't have any spatter on them. And I -- just
9 to go ahead and clarify, I didn't see anything that
10 compelled me to believe that the body had been handled
11 after bleeding had occurred.

12 Q. Why would you think that someone would not
13 have spatter? Can you explain to us why you -- why
14 there would not be spatter if there was a lot of blood
15 at the scene?

16 A. Well, in -- in -- in quick general terms, the
17 -- the injury that causes bleeding, there's a -- there's
18 a -- there's a time span between the bleeding itself and
19 -- and -- and the spatter. And -- well, I'll just go
20 ahead and explain that fairly -- fairly quickly.

21 There's a misconception many times that people
22 think that because there's an injury, there's immediate
23 spatter of blood. There generally is not unless it's a
24 very massive injury. And so you have to create the
25 bleeding first and then subsequent actions after that

1 would create spattering or staining around the victim or
2 on -- on objects around the victim or on the -- the
3 people who are doing the -- the battering. In my
4 experience, for a beating, most of the time that spatter
5 does not end up on the people doing it.

6 And I've done -- I teach this all the time.
7 We have classes regularly. I had a class in October
8 where we dressed people in white suits. We put them
9 into situations -- and we do this all the time in a way
10 to teach them the mechanisms that are occurring when
11 this happens.

12 In general terms, a situation like this, I
13 would say if you were to ask me in general terms I
14 wouldn't believe they had, but in this particular case
15 when I went out there and looked at it, I still didn't
16 believe that -- that that's so. Now, that doesn't mean
17 that it couldn't have happened. It's just my opinion
18 that in that case there probably wouldn't be.

19 And this is a question that I'm asked
20 frequently when I go to crime scenes because the
21 investigators want to know if they put hands on someone
22 fairly quickly, can they expect to find blood on their
23 clothing, in their shoes, on their shoes, those kinds of
24 things. And they want to know that as -- as an
25 investigative aide. So it's a question I'm asked all

1 the time and I answered for them.

2 Q. And you gave them your opinion.

3 A. I gave them my opinion. In this case I felt
4 like that they probably were not looking for somebody
5 that had blood on them.

6 Q. Was that based on your experience?

7 A. Yes. In many cases where I've been where the
8 -- the people were caught fairly quickly where their
9 clothing had been recognized by witnesses, in my
10 experience they didn't have blood on them either, so --
11 *(no further response)*.

12 Q. The second question about what the weapon --
13 what weapon was used, what sort of response did you give
14 them for that?

15 A. I couldn't make a determination. That's a
16 very difficult thing to do, and on very rare occasions
17 have I been ever -- ever able to do that from -- from
18 bloodstain.

19 Q. Did you have conversations with Agent Pagani
20 and Agent Hensley from CCBI about this case and about
21 submissions to you or things for your testing?

22 A. Yes, sir, I did. They showed me around what
23 was cordoned off as the crime scene. We looked at the
24 body. They also showed me what appeared to be tire
25 tracks and blood close to the body. And then they took

1 me to go look at a vehicle that was stuck in the sand
2 outside of the cul-de-sac itself and showed me what they
3 believed to be a bloodstain on the fender of the car.

4 Q. And on -- did you have occasion to look at
5 their reports, the typed-up reports that they had --

6 A. I have.

7 Q. -- prepared?

8 A. Additionally -- I'm sorry -- they -- they also
9 had questions about luminol.

10 Q. Okay. Tell us about that.

11 A. Well, in -- in subsequent reviewing of the
12 case or -- or what they had at the crime scene, I asked
13 them if they were gonna do luminol because it was --
14 looked to me to be a good case to do luminol. And we
15 had recently gone through training with CCBI to teach
16 them how to do luminol, and -- and I was familiar with
17 both of the agents who were there. And I asked them,
18 "Do you need help to do that?"

19 We discussed it, we discussed how to do it,
20 and they said they wouldn't need any help that evening.
21 And I said -- we went over the entire thing with them:
22 the protocol, how to do it, what needed to be done --
23 and we discussed that at length.

24 Q. Was luminol in widespread use at that time?

25 A. No, it was not. It was -- primarily the SBI

1 had been the only ones in this state who had done it.
2 If -- if I remember properly, C- -- CC- -- if I remember
3 correctly, CCBI was the first agency outside of the SBI
4 to be taught how to do it.

5 Q. And what did you talk about doing with the
6 luminol?

7 A. Talked about spraying the cul-de-sac to
8 determine -- you know, to continue to see if there was
9 blood in the cul-de-sac that would give them a trail or
10 something to follow. And also it was discussed that
11 they would do the inside of the vehicle and the bottom
12 of the vehicle.

13 Q. And you had an opportunity to look at their
14 reports --

15 A. I did.

16 Q. -- when they did the test?

17 Did you also see drawings that accompanied the
18 reports?

19 A. I did.

20 Q. And did you see a drawing that started from a
21 -- the area where the body was found and went in sort of
22 a circular pattern?

23 A. Yes, I did.

24 Q. And from reviewing that, what -- what
25 information did you get from that?

1 A. Well, I reviewed the report to see what the
2 results were but also to determine if, you know, they
3 had done the luminol according to protocol as we had set
4 out for it to be. And -- and from everything that was
5 -- was listed in the report, it appeared to have been
6 done properly as we trained people how to do it.

7 Q. Did they submit items for you to test to try
8 to determine if there was presence of blood or body
9 fluids as serologists?

10 A. They did.

11 Q. Did -- did you collect the samples or did CCBI
12 collect the samples?

13 A. CCBI collected the samples.

14 Q. And did they send -- did you get them that day
15 or was this some later point when you received them?

16 A. It wouldn't have been that day, but I don't
17 remember the dates.

18 Q. Is it typical that that stuff is sent to you
19 at a later time for you --

20 A. Yes.

21 Q. -- to do the analysis?

22 A. It takes a -- it takes a while for them to
23 obviously process, and then what is standard is they
24 would take the items back to the -- to their location
25 and then they organize -- they number them and then that

1 put them on what's called an SBI-5 form which is a -- a
2 submission form to us. And then at some time they would
3 bring them to the laboratory and that would be entered
4 in and then brought to -- to us.

5 Q. And at that point, as a serologist, were you
6 -- what kind of analysis were you doing? Was it DNA or
7 can you --

8 A. No.

9 Q. -- describe the kind of --

10 A. It was --

11 Q. -- what you were looking for?

12 A. Really it was what I would call a day standard
13 serological examination, but what -- what you would do
14 is you would go in -- we would receive all kinds of
15 evidence, and we would be looking for -- we would have a
16 -- we would have a submission that would have a request
17 on it. In other words, it would be "look for semen,
18 look for saliva" -- in this case I received cigarette
19 butts; they wanted to look for saliva -- or "look for
20 blood."

21 And so we would do various tests to determine
22 what the -- what the fluid was, if we could find the
23 fluid, and then once that started we would continue on a
24 process to identify it and then to type it. When I say
25 typing, at that time we were typing using generally

1 enzyme typing which was a fairly crude method for doing
2 it. The -- the discerning capabilities or properties
3 were not very great, but it was the best we could do.

4 But it was a long series. It took a long --
5 long period of time. ABO was one of those, and then
6 there was a long series of other enzymes that we used at
7 the time that are reported in my report. And if we
8 could distinguish using all those enzymes the
9 differences between individuals submitted or blood
10 samples submitted and the evidence that was submitted,
11 then we would make comparisons and we would report what
12 our findings were.

13 Q. Generally, in -- in getting submissions for
14 the -- to search for blood, if we could focus on that,
15 how would they typically collect a sample in 1991 to
16 submit to --

17 A. They would look -- generally what would happen
18 is at that time they would look at it and determine --
19 well, I'll give you a general example.

20 If they came upon somebody that had blood on
21 them, they would take their clothes and it would be
22 bagged up and it would be sent to us, and we would look
23 through there and look at the stains or whatever and
24 then start that work.

25 They might have things that they didn't know

1 whether there was blood on it or not, and they would
2 send it in and we would try to find it, or they might
3 cut out stains that they thought was blood -- that they
4 -- that they thought were blood and send that in to us
5 and then we would start from there. So there was all
6 kinds of ways to do that.

7 Q. And what -- what would -- when you received a
8 submission, what would that typically be? Would it be
9 an item that was a physical object, or would it be cloth
10 or -- or what would the -- what -- was there a range of
11 things that you'd look at and test?

12 A. There was a range of things. They -- they
13 could take a car apart and send it in or they could take
14 the blood off the object itself and send it in.

15 Q. How would they take the blood off an object
16 itself?

17 A. Well, the -- the standard procedure at the
18 time was to take -- we would -- we would actually
19 provide this for most of the agencies in North Carolina.
20 We would boil cotton cloth to get rid of any kind of
21 properties that had -- that might interfere with blood,
22 and then we would tease threads out of that.

23 They would take the threads. They would apply
24 distilled water to it, and they would very carefully
25 remove the bloodstain from whatever object it was. It

1 would be air-dried. It would be placed in an envelope
2 or they would use a -- what we call a pharmacy fold and
3 fold up a piece of paper, put it in there, and then that
4 would be submitted. We would receive a description,
5 where it came from, and then we would do the typing on
6 it.

7 Q. And would they just go around wiping things,
8 or did they -- was there a protocol for what they would
9 do before they sent you a submission?

10 A. Well, there was a protocol, but, I mean, we
11 don't know how it happened. I mean, they do, you know,
12 -- they -- we didn't know how it was done, but there was
13 a protocol for it, sure.

14 Q. Would it be typical for crime scene agents to
15 do some sort of testing before they would send you
16 something to test?

17 A. That was not a real wide -- that wasn't a -- a
18 widespread practice at the time. The -- the way to do
19 that would be phenolphthalein would be used as a
20 screening process. And we were -- we were the only ones
21 really using phenolphthalein in the early years, but we
22 were beginning to train other agencies and CCBI, in this
23 case, had been trained to use phenolphthalein and they
24 were using it.

25 Q. Were they -- and they -- you just mentioned

1 they were also using luminol?

2 A. They were using luminol also.

3 Q. How would -- what would you typically do to --
4 to -- with phenolphthalein? How was that -- how was it
5 used?

6 A. Phenolphthalein was a series of three
7 chemicals that were -- that were used. We made the
8 phenolphthalein and we gave it out because there were
9 very strict quality control procedures. It was made in
10 our lab. It was tested. We would give it out. It was
11 used in a certain order. They had to be trained. The
12 training process was a fairly long process. I was one
13 of the instructors that trained for it.

14 The way it was used is if there was a suspect
15 stain, you would -- you would wipe it with a filter
16 paper which is a commercially bought laboratory grade
17 paper, and then you would -- you would apply the
18 chemicals to it to determine -- to -- to begin to
19 determine in the process if it's blood. And -- and so
20 that's how it was used.

21 Q. And then you would receive submissions in the
22 laboratory and you would perform tests and report the --
23 back to the agencies?

24 A. That -- that's correct.

25 Q. And when you did that, did you typically make

1 notes at the time you conducted your tests?

2 A. Yes.

3 *(Mr. Willoughby and Mr. Klinkosum*
4 *conferred.)*

5 MR. WILLOUGHBY: May I approach the
6 witness, Your Honor?

7 JUDGE MANNING: Yes.

8 Q. BY MR. WILLOUGHBY: I hand you what's been
9 marked for identification as Defense Exhibit 30, and ask
10 you if you would look through that.

11 *(Defendant's Exhibit 30 identified.)*

12 A. *(Reviewed exhibit.)* Yes, sir.

13 Q. BY MR. WILLOUGHBY: Now, are those notes that
14 you prepared?

15 A. They are, sir, but there appears to be a page
16 missing.

17 MR. FORD: It may be front and back.

18 Q. BY MR. WILLOUGHBY: Is there a back page?

19 A. Oh, I'm sorry. It is -- there is front and
20 back. I apologize. Okay. Yes.

21 Q. I want to focus on --

22 A. Yeah, this is my report.

23 Q. And I want --

24 A. And my notes.

25 Q. -- to focus on some notes here. It starts off

1 talking about different items. In your handwritten
2 notes you have item -- one item 16?

3 JUDGE MANNING: It's on page 20,
4 Mr. Deaver.

5 THE WITNESS: Thank you, sir.

6 JUDGE MANNING: Your note is gonna be on
7 20 and 21 and 22.

8 THE WITNESS: All right. Thank you.
9 Thank you, Your Honor.

10 A. Yes, sir.

11 Q. BY MR. WILLOUGHBY: This item 16, is that
12 something you received to test?

13 A. Yes, sir.

14 Q. And do you know what that item was?

15 A. I have it listed as a piece of black -- well,
16 I -- a piece of molded plastic from an automobile.

17 Q. Is it something you may have referred to in
18 your report as a fender line?

19 A. That's correct.

20 Q. Okay. Is the handwriting on there, is that in
21 your handwriting?

22 A. Yes, sir.

23 Q. Would you explain what the writing is and --
24 and what you did in testing that item?

25 A. These are -- these are what are generally

1 referred to as bench notes. It's a piece of paper I
2 just would take out, sitting on the bench. As I would
3 open up a piece -- item of evidence on the -- on my
4 workbench, then I would start making notes as to what I
5 had there.

6 In this case -- there's a lot of abbreviations
7 there that we commonly used. S with a -- with a mark
8 over it and BPB is sealed brown paper bags. They were
9 taped together. And then I go into a little bit about
10 it. There were several stains on the back and it says
11 that I circled the stains. And then there's a notation
12 "phenol plus." That an abbreviation for
13 phenolphthalein. And then Ouchterlony is listed out
14 there and Takayama, and then NFA stands for no further
15 analysis.

16 I might explain that when I would make my
17 bench notes I would write out everything that I had
18 proposed to do with -- with a sample. And so I'd just
19 write every -- all my tests would be written out.

20 Q. And what did you do to this particular piece
21 of plastic?

22 A. I don't remember specifically, but I -- I
23 would assume that as I always did, I took a filter paper
24 and wiped the -- wipe -- started wiping stains and
25 things that I saw on it, and then I would do

1 phenolphthalein tests.

2 Q. Now, when you say you don't remember
3 specifically, you don't have an independent recollection
4 of this particular --

5 A. I don't remember --

6 Q. -- procedure?

7 A. -- this piece of evidence. I sure don't.

8 Q. And you are looking at your notes to --

9 A. Yes, sir.

10 Q. -- refresh your memory?

11 A. And I'm using what I generally would do as --
12 to -- to -- to talk about.

13 Q. And did you try to follow a sort of standard
14 pattern of what you did?

15 A. Well, we had a very strict training regimen in
16 -- in the SBI, and we were all taught to do everything
17 almost exactly the same way. So, you know, we did
18 everything the same way all the time, pretty much.

19 Q. And on -- what would -- based on that, what
20 would you, by looking at your notes, believe that you
21 did to this piece of evidence? And explain what's
22 written down on the piece of paper.

23 A. Well, I looked at it visually for the presence
24 of blood. I noted that there were several stains
25 present, but I don't say anything about the stain, so I

1 just have to assume they weren't very remarkable.

2 But -- and then I would wipe it down with
3 phenolphthalein. The purpose for that was only to test
4 and see what the stain was, but sometimes you would try
5 to find the stain with that. So if have a black object,
6 like I would assume this was, you have to start trying
7 to find where you might have a bloodstain on it.

8 Q. And how do you do that?

9 A. You just wipe -- first you look carefully
10 because if you wipe too much, you do away with the
11 stain. And so you would look very carefully,
12 independently test-staining. Then if you didn't get
13 anything specific on any of the stains, then you would
14 wipe the whole thing down. And then it's --
15 painstakingly you have to go back and try to find where
16 you got a positive, which is almost impossible a lot of
17 times, so -- *(no further response)*.

18 Q. So you wouldn't know from your notes there
19 exactly where on the piece of plastic you --

20 A. No.

21 Q. -- got the result?

22 A. What normally would have happened is, had I
23 found something particular, I would have drawn on the
24 piece and where the stain came from. But because that's
25 not there, leads me to believe I couldn't find anything

1 in particular, so -- *(no further response)*.

2 Q. And would you explain what you said about
3 Ouchterlony or the other writing on there?

4 A. Ouchterlony is a -- is a test that we would
5 do to determine the species. It's a species test. And
6 we would determine if, you know -- I mean, I did
7 wildlife cases. We would determine if it was deer, you
8 know, cow, all kinds of things. But in this case we'd
9 be looking for human blood.

10 And so we would do the test on it to determine
11 if we could determine the species, and then we would
12 continue on our typing.

13 Q. What was the progression that you would do in
14 terms of testing?

15 A. Progression was phenolphthalein, Takayama,
16 Ouchterlony, and then we would go into the typing test.

17 Q. Do you still use that process today in the
18 lab?

19 A. Well, I left -- I left the lab in '93 and --
20 and went to the field, but I called the lab recently
21 just to kind of ask them what they were still doing, and
22 they do not do that.

23 Q. What do they do now?

24 A. Takayama they told me had been done away with
25 seven years ago. And what they do is that when there's

1 a phenolphthalein, they go straight to DNA. They do no
2 confirmational test like Takayama or species test or
3 anything like that. That's all done away with.

4 Q. Why did they change the procedure?

5 A. Well, and -- and I'll just -- I'll just speak
6 from what my knowledge is. I -- I'll tell you that I
7 took all the course work for DNA, so I can speak a
8 little bit to it.

9 But DNA is a lot more specific. It's a lot
10 more -- it's -- it's a lot more powerful tool. And when
11 you're do -- when you're doing this to samples, you're
12 using up tremendous amounts of sample. These are very
13 crude tests. And when it got to the point where DNA was
14 so -- so easily run, so well run, don't waste the test
15 -- don't waste your samples, go straight to that, and --
16 and that's what -- that's really what happened.

17 Q. Would you tell us what the Takayama is and
18 what you do?

19 A. Takayama is a -- is a chemical test. You
20 would take a bit of sample and you would apply a
21 chemical to it, and it would produce crystals that were
22 specific to -- to blood. And you would identify it
23 under the microscope. And when you had those crystals,
24 then you could say that it was blood as a substance.

25 Q. And with this Takayama test, what were you

1 testing? What -- were you testing a piece of plastic or
2 were you testing --

3 A. No, you would --

4 Q. -- some other --

5 A. -- you would take -- you could take -- you
6 could scrape some blood off and put it on a microscope
7 slide. You could have a stain that was on the
8 microscope slide. You could take a piece of the thread
9 that was stained, of a -- I say a chip of blood. You
10 could -- any of those could be put on a microscope slide
11 and you put the chemical on there. And over a period of
12 time -- and I don't remember if it took a little while
13 to -- before it would work.

14 Q. And when you did the Takayama test here, what
15 did you do?

16 A. In this case?

17 Q. Yes.

18 A. Well, in this case, you know, I took something
19 that was a -- a bit of a stain or something and put it
20 on there. I don't know specifically what it was, but
21 whatever it was, it didn't -- it didn't work.

22 Q. So, and when you tested negative, what does
23 that mean?

24 A. That means that it was -- that I was unable to
25 achieve a result on that. There were no crystals on the

1 slide. Therefore, I can't say with scientific certainty
2 that -- that that -- that that was blood.

3 Q. And did you do further testing?

4 A. No, sir, I did not. That's where it ends. If
5 you don't get a Takayama, that's where it ends. Back
6 then that's where it ended.

7 Q. And did you do the Ouchterlony?

8 A. No, I did not.

9 Q. Is that what that indication is, that that
10 test was not performed?

11 A. Yeah. In the middle -- beside each one -- and
12 I'll just explain. Anti-human would be where my test
13 result would be -- HC is human control and GC is goat
14 control. We used goat serum in there. And then each
15 one -- NT is not tested.

16 Q. And when you have the human control and the
17 goat control, is that something that was submitted to
18 you by the agency?

19 A. It's a -- it's a commercial -- commercial
20 serum, and we would -- we had stocks of that and we
21 would use it. If you got a positive for goat control,
22 your test was no good, so it had to be thrown out and
23 redone, so -- *(no further response)*.

24 Q. All right. Did you do anything further about
25 that particular object?

1 A. No. An N means no further analysis, and that
2 was typical. If you couldn't get past the Takayama,
3 you're -- you're finished with that sample.

4 Q. Would you turn on to the next page and look at
5 item 17? Tell us about that.

6 A. Yeah, 17, sealed napkin. S with a line over
7 it means sealed. It was labeled with a B on it. It was
8 wrapped around two microscope slides which contained --
9 I put stained threads, and they were stained -- I -- I
10 made a note kind of to the quality of the stain. In
11 this case it said very lightly stained. And I put to
12 the side "It looks like a portion of insect." To me
13 that's what it looked like. And then phenolphthalein
14 was negative, Takayama was negative.

15 And then I actually had run the Ouchterlony.
16 It was negative for human and positive on the control
17 and negative for the goal control. And then under
18 that's Q- -- QNS means quantity insufficient.

19 Q. What does -- what does the QNS -- what does
20 that mean?

21 A. Quantity insufficient would mean that there
22 was no more sample from that point. I've used all the
23 sample up. You can't -- there's nothing else to be
24 tested on that is what -- is what that meant. When I
25 had set up all those tests, I used everything. That's

1 what it means. I usually put that wherever I was --
2 wherever I finished up.

3 You -- you can -- quantity insufficient could
4 have occurred anywhere along this road. After ABOs, it
5 may say "quantity insufficient" and I couldn't test
6 enzymes, or I may have gotten two enzyme tests out of it
7 and "quantity insufficient" and we were done.

8 And we typically at that time used up lots of
9 sample because it took a lot to do this. This is really
10 crude; pretty crude testing.

11 Q. And was there anything further about that one?
12 When you -- when you said it looked like a portion of
13 insect, did you discount that at that point?

14 A. Well, I wouldn't discount it just because I
15 said that. It's just a note. But from the -- when I
16 got nothing else, then that's the -- that's not blood.

17 Q. And could you tell us about item 18?

18 A. 18's a sealed napkin labeled A, wrapped around
19 one microscope slide. It contained four stained threads
20 and phenolphthalein plus Takayama. I got negative on
21 that. Ouchterlony was set up and run, and then there
22 was QNS after that or quantity insufficient. When I got
23 through setting up the Ouchterlony, there was nothing
24 left of that sample.

25 Q. So when there's nothing left of the sample,

1 what do you do with the slide?

2 A. The slide would be placed back in whatever it
3 was. Everything that's left, no matter what it was, was
4 put back as evidence and returned to the department.

5 Now, if we finished all the typing we could do
6 and there was blood sample left, it went back in and it
7 went back to the department. We didn't destroy things.
8 We just used them to the best we could.

9 Q. You used whatever portion necessary and
10 returned --

11 A. Correct.

12 Q. -- and returned any left over?

13 A. That's correct.

14 Q. And if there was nothing left over, then you
15 would return the slide?

16 A. Yes.

17 Q. When you did the phenolphthalein test, did you
18 do that on the slide?

19 A. I don't remember.

20 Q. How did you do the Takayama test?

21 A. The Takayama test in this case would probably
22 have been done from the slide itself. If people
23 submitted slides to me, what generally would happen is
24 they would let the threads dry on the slide, so you
25 would see a stain on the slide. And so instead of using

1 up the threads that I had which were precious to us, we
2 would add Takayama chemicals straight to the slide
3 itself and use it that way.

4 Q. When you did that, what did it -- how did it
5 appear after you had performed the Takayama test?

6 A. The what? How did what appear?

7 Q. How did the slide appear?

8 A. Well, it would have a -- it would have a
9 chemical that dried on it a little bit. It would have a
10 brownish color to it.

11 Q. Okay. And what's the chemical that you used
12 for the Takayama test?

13 A. I don't remember.

14 Q. Okay.

15 A. It's a -- it's a pretty -- I remember it was a
16 pretty nasty chemical. We were careful with it. It
17 smelled up the place. It's -- but I'm sorry, I don't
18 remember it.

19 Q. All right. I want to turn your attention over
20 to the next page to item number 46.

21 JUDGE MANNING: Let me ask him one
22 question.

23 MR. WILLOUGHBY: Yes, sir.

24 JUDGE MANNING: When you say QNS at the
25 end of this, you're not being critical of CCBI's

1 gathering of the evidence, are you?

2 THE WITNESS: No, sir.

3 JUDGE MANNING: This is just your note
4 that there's nothing left for you to do.

5 THE WITNESS: We -- yes, sir. Your Honor,
6 we -- I put that down there so that people would know.
7 People -- we -- we would constantly have questions, "Is
8 there anything left?" And especially -- this was in a
9 time period where DNA was starting to come and cases
10 were coming back, and we would have to know is there any
11 evidence left that could be used for -- for -- for DNA
12 analysis.

13 And we would put this on here so that we
14 could quickly go through and say "There's no -- there's
15 no sample left to be done for DNA." That's what that
16 meant. And I'm -- I'm not being critical of anybody.
17 It's just an indication that after that there was
18 nothing left to do on that.

19 JUDGE MANNING: What you got, what you had
20 to work with, Agent Deaver, was sufficient quantity to
21 get the results you got.

22 THE WITNESS: Right.

23 JUDGE MANNING: And when you finished with
24 the slide or whatever -- the squished insect or whatever
25 it was, you wrote down there was nothing left to use for

1 a test.

2 THE WITNESS: That's right. And normally
3 if you were to look, many times there would be envelopes
4 where stuff -- that that stuff was sent in. You look in
5 there, there's nothing in there. And the reason for it,
6 I could go back to my notes and say, "It's not been
7 destroyed, it hasn't been lost, I used it up."

8 JUDGE MANNING: Okay, thank you.

9 Q. BY MR. WILLOUGHBY: Turning your attention to
10 item 46, could you tell us about that?

11 A. Item 46, sealed brown paper bag containing one
12 pair of orange pants and a black belt. And I was asked
13 to look at that -- I think it was Mr. Hensley asked me
14 to look at that.

15 Let -- let me just say we were -- it was the
16 laboratory's policy not to do typing tests on a victim's
17 clothing unless there was a compelling reason why it
18 should be done. That was just simply a method to reduce
19 the number of items that we were looking at because this
20 was slow -- again, painstaking, and it was the policy
21 not to do that.

22 These pants were submitted to me not for
23 typing tests, but they were submitted to me for a
24 bloodstain pattern analysis examination, and that's what
25 I did.

1 Q. And what -- what did you do for your
2 bloodstain pattern analysis with regard to those pants?

3 A. They were viewed -- they were -- they were
4 reviewed or viewed visually for the presence of
5 bloodstains. And so the outside of the pants were
6 viewed and I made a note, "There are no stains on the
7 outside of the pants."

8 And then what was typical for bloodstain
9 pattern analysis was, I would then go over that article
10 with phenolphthalein to see if I got a reaction that
11 perhaps I had missed something and we would go back and
12 -- and take a look at it again. Sometimes in dealing
13 with bloodstains, you're dealing with very small
14 bloodstains and, you know, you could miss it or
15 whatever. But that was standard. In this case it was
16 phenolphthalein negative.

17 What I did was I would just do a rubbing over
18 the entire outside of the garment. Phenolphthalein is
19 so sensitive, if you're gonna hit it, you get it in
20 there.

21 And then I looked at the inside of it and
22 there were several small stains on the left leg inside.
23 They were phenolphthalein positive, but I couldn't
24 characterize them as to how they came about, so I -- I
25 made -- I -- I reported them, but I didn't say anything

1 specific about them.

2 The other thing that I did, too, though, I did
3 do a serological examination on them, and I was looking
4 for semen. And that's what AP is. Acid phosphatase is
5 a chemical indication of semen, and -- and that was what
6 I was looking for. I got no indication on it. It says
7 no slide was made because I got no indication that there
8 was semen there. And then I made a note that there --
9 the pants were sandy. There was sand all over them.
10 And then "no further analysis."

11 Q. That means that you performed no further tests
12 on that particular item.

13 A. That's correct.

14 Q. And did -- did you -- from your notes, did you
15 prepare a report?

16 A. Yes, sir, I did.

17 MR. WILLOUGHBY: Your Honor, if I may
18 approach the witness?

19 JUDGE MANNING: You may.

20 Q. BY MR. WILLOUGHBY: I hand you what's been
21 previously marked as Defendant's Exhibit 31 and ask you
22 if you can identify that.

23 *(Defendant's Exhibit 31 identified.)*

24 A. Yes, sir. That's a copy of my report. It has
25 writing all over it. That is not my writing, but it is

1 a copy of my report that was -- *(no further response)*.

2 Q. BY MR. WILLOUGHBY: So the -- the handwriting
3 on there is not yours?

4 A. It is not mine.

5 Q. And is the -- when it left the lab, other than
6 the signature down for Mr. Dunn, who was the director at
7 that time, was there any other handwriting on it?

8 A. No, there was not.

9 Q. So that -- all of that handwriting, those
10 notations are things that appeared after --

11 A. That's correct.

12 Q. -- you sent it in?

13 A. And they're not mine.

14 Q. Not yours. Do you -- is this a lab report
15 that you created the form, or is there some -- is there
16 some basis for why you present the information this way?

17 A. Yeah. That's a standard report form format
18 that was required of the SBI at that time for what we
19 were doing at that time.

20 Q. Was required by whom?

21 A. It was required by SBI policy and procedure.

22 Q. Okay. Does the SBI lab have any sort of
23 certification? And, if so, please explain that to us.

24 A. Well, our -- everything that we do is under
25 the auspices of the American Society of Crime Lab

1 Directors' certification, and the reporting format and
2 the language of the reports is -- is, you know, I guess
3 approved by them because they inspect all of that stuff
4 and -- and it has to be according to their -- it's
5 pretty much standardized stuff across -- across the land
6 as far as forensic laboratory -- police forensic
7 laboratories or whatever.

8 Q. So when you say "the language," what do you
9 mean by that?

10 A. Well, the way that we state things in there
11 has to be, I mean, pretty well standardized.

12 Q. Is there any standardization for what you do
13 or don't report?

14 A. It's -- yeah, I mean, it's pretty much all --
15 what you do or don't is also part of it. They -- you
16 know, if they don't like what you're reporting, then
17 they -- they change it.

18 Q. So when you write up a -- the results of a
19 test, there's a specific type of language that you're to
20 use --

21 A. Absolutely.

22 Q. -- based on the results that you got from the
23 test?

24 A. That's correct.

25 Q. And do you put any other thing in there other

1 than the specific language that is the standard protocol
2 for those tests?

3 A. Well, no. I mean, you weren't allowed to.
4 These tests were -- were -- I mean, these reports were
5 reviewed by your -- your supervisor, and -- and you
6 weren't allowed to just free -- you know, free-express
7 yourself. You know, they -- they reviewed everything,
8 your notes and all, and they signed off on it.

9 And the -- the SBI had a -- had a protocol for
10 everything that we did and the way things were stated.
11 I mean, you had to do it that way.

12 Q. So when your supervisor reviewed the report,
13 did they also have your notes there to look at it and
14 see whether or not --

15 A. They had the whole file, yes, uh-huh.

16 Q. -- whether or not you had properly reported --

17 A. That's correct.

18 Q. -- the results of your tests?

19 A. That's correct.

20 Q. And in this particular case, I'd like for you
21 to -- to -- I guess it's about the second page of the
22 report. Down at the bottom it makes some results of the
23 -- any examination of the three that I've talked with
24 you about here: 16, 17, 18, and 44 -- 16, 17, 18, and
25 46?

1 A. That's correct.

2 Q. Would you explain -- would you tell us what
3 you reported and why you reported it in that way?

4 A. Just the little paragraph is all you're
5 interested in?

6 Q. Well, we'll start with that and then we -- I
7 think we -- there may other things. And I'll give you
8 an opportunity to explain that, but I would like for you
9 to address that one first.

10 A. Well, "Examination of items 16, 18, and 46
11 gave chemical -- gave chemical indications for the
12 presence of blood" means that I -- I achieved a
13 phenolphthalein positive and was unable to confirm it
14 through the use of Takayama. And so that's what that
15 means.

16 Q. Is that the way that it was -- the protocol to
17 report it in --

18 A. Yes, it is.

19 Q. -- 1991?

20 A. Yes.

21 Q. Is it still the way --

22 A. It is.

23 Q. -- the SBI reports it --

24 A. Yeah, the --

25 Q. -- in 2010?

1 A. The language is the same today. Yes,
2 absolutely.

3 Q. And what about the second sentence there?

4 A. "Examination of item number 17," which I
5 believe was the bug where I had written it looked like
6 bug stuff, "failed to reveal the presence of blood."
7 That means that there is no blood that I could find on
8 that object.

9 Q. And -- and that -- what test results
10 correspond to that language? Is that from your
11 phenolphthalein test or --

12 A. Yeah, that would be -- if you get a negative
13 on that, you're done and there's nothing, so that's what
14 you report.

15 Q. And you don't go any further.

16 A. That's correct.

17 Q. There's lots of other items in this report
18 that -- you tested a bunch of items for the CCBI?

19 A. That's correct.

20 Q. And did you report your testing and all of
21 what you did to all of those other items?

22 A. I believe so. Everything that I did, yes.

23 Q. And did you --

24 MR. WILLOUGHBY: I'm sorry, did you --

25 JUDGE MANNING: Huh-uh.

1 Q. BY MR. WILLOUGHBY: Did -- did you -- the --
2 the language and the way you reported it, was it in the
3 standard form for the protocol that was in place at that
4 time?

5 A. Yes, it is.

6 MR. WILLOUGHBY: If I might have just a
7 moment, Your Honor.

8 *(Pause in proceedings.)*

9 Q. BY MR. WILLOUGHBY: Agent Deaver, leaving the
10 lab for a minute and going -- going back to these items
11 that you tested, these 16, 17, 18, were you aware of
12 other testing that was done on those objects by CCBI?
13 When -- when CCBI did some sort of preliminary testing
14 before they sent them to you?

15 A. I was.

16 Q. And was that included in their reports?

17 A. It was.

18 Q. And at the time was Agent Pagani the person
19 that was doing the phenolphthalein testing?

20 A. I believe that's correct.

21 Q. And was Supervisor Hensley the one who was
22 doing the luminol testing?

23 A. I believe that's correct also.

24 Q. And were you -- on that -- particularly that
25 item number 18, with the -- the -- that you tested, did

1 you realize that they had done other tests on that?

2 A. Item number 18?

3 Q. Yes, sir.

4 A. Yes, I -- I am aware of that.

5 Q. And is that what's been referred to as the
6 fender edge?

7 A. To the best of my knowledge, that's correct.

8 Q. And did you know the results of what testing
9 that Agent Pagani did with that?

10 A. That was a phenolphthalein positive.

11 Q. And were you aware of what testing Agent
12 Hensley did with that with the luminol?

13 A. Yes. That was positive, also.

14 Q. And had you had an opportunity to actually see
15 that fender edge?

16 A. I did.

17 MR. WILLOUGHBY: May I approach the
18 witness, Your Honor?

19 JUDGE MANNING: You may.

20 Q. BY MR. WILLOUGHBY: I hand you what's been
21 previously identified as State's Exhibit Number 10 and
22 ask if you could look at that.

23 *(State's Exhibit 10 identified.)*

24 A. I have seen that before.

25 Q. BY MR. WILLOUGHBY: And can you tell us what

1 that is?

2 A. It's the right front fender well or you would
3 consider it the passenger side on the front side of the
4 vehicle that was stuck in the sand at the end of this
5 cul-de-sac.

6 MR. WILLOUGHBY: I'm sorry, for the
7 panel's purpose, that would be Defense Exhibit Number 6
8 in the book behind --

9 JUDGE MANNING: All right.

10 MR. WILLOUGHBY: -- "Automobile."

11 JUDGE MANNING: We've seen the picture.

12 *(Defendant's Exhibit Automobile 6*
13 *identified.)*

14 Q. BY MR. WILLOUGHBY: And did you actually
15 observe that at the crime scene?

16 A. Yes, sir, I did.

17 Q. And what did you observe about that?

18 A. Well, they took me over to see it and they
19 showed it to me, and this was in -- I had already looked
20 at the scene, looked at the car tracks -- the visible
21 ones that were there at the scene, and -- and I was
22 asked to -- to look at that and tell them what I thought
23 of it.

24 Q. And did you tell them what you thought of it?

25 A. I told them they needed to collect it and that

1 it would be -- from what I had seen at the scene, that
2 it would be in keeping with blood that had been tracked
3 out there in the cul-de-sac.

4 Q. And is -- is that based on your bloodstain
5 analysis?

6 A. Well, I would say that that's based on my
7 experience as a serologist and having seen lots and lots
8 of blood samples and also bloodstain pattern analysis,
9 also.

10 And -- and the reason I would say that is,
11 just to -- to verify that is, when I look at objects and
12 I look at actions that are taking -- taken, I want to
13 see what would be consistent with those kinds of things.

14 And when you take into consideration -- just
15 briefly, take into consideration this truck tire, the
16 type of tire that it was, the type of surface beside the
17 body where the tire had -- where a tire had rolled
18 through blood, and all things considered, I would
19 consider that in keeping.

20 I would not expect there to be a lot of blood
21 thrown up on the car from what -- what I was looking at.
22 When you drive through blood, it doesn't squirt out and
23 splash and spray all over the place. It just simply
24 moves it, and it would have picked up a small amount.
25 There would have been a small amount perhaps to cast

1 off, but it would have been very quickly removed because
2 of the surface, and then there would be nothing cast
3 off.

4 And so when I looked at this car, it seemed to
5 me to be consistent with what we were looking at in the
6 cul-de-sac, and that was my opinion.

7 Q. And you had mentioned about sand. Does sand
8 -- you mentioned that a couple of times. Does that have
9 any particular significance in the testing that you do?

10 A. Well -- well, yeah. It's been my experience
11 that sand, along with a lot of other things, will --
12 will prohibit the type of testing that we were doing at
13 the time.

14 Road grime seem -- seemed to have an effect.
15 And what I consider -- what I call sticky kind of sand,
16 real fine sand, seemed to -- to -- to -- to disrupt my
17 ability to type blood for whatever reason.

18 Q. In these -- I asked you earlier about your
19 notes. When you send in the report, what happens to the
20 notes and the -- these that you call bench notes?

21 A. They -- well, at the time they were placed in
22 files and kept in a central -- central filing system,
23 but since that time all of this has been -- has come --
24 has come from microfilm or some computerized system.
25 These are copies, but -- but they're -- they're

1 maintained.

2 Q. They maintain them permanently?

3 A. They do. And the agent didn't -- there --
4 they didn't come from me. They -- they came from the
5 laboratory.

6 Q. And would you typically have sent out these
7 unless someone requested them?

8 A. No, they were not. They were not removed from
9 the lab.

10 Q. When do you -- do you remember someone coming
11 to ask to look at them?

12 A. This all came to me when -- when Mr. Ford
13 called me one day and said, "Meet me at the laboratory."
14 That's the first time. And we went over there and we
15 were talking to Agent Russ Holley about some work that
16 he had done, and then I -- I -- I believe I asked for --
17 for the file and my notes to be retrieved.

18 Q. Okay. And is that the first time that you had
19 talked about them with anybody?

20 A. That's correct.

21 Q. Other than with other people within the lab?

22 A. That's correct. Well, I hadn't talked to
23 anyone in the lab. This was all a surprise. When he
24 called me, that's the first I'd heard about it.

25 Q. When you -- at the time of the testing, you

1 discussed them with your supervisor?

2 A. Well, maybe, yeah.

3 Q. All right. But you've never had any other
4 conversations about it?

5 A. No.

6 JUDGE MANNING: Mr. Willoughby, what year
7 are we talking about, for those of us who --

8 MR. WILLOUGHBY: I'm sorry.

9 Q. BY MR. WILLOUGHBY: When -- was this last
10 summer in the summer of 2009 when you --

11 A. I think that's correct.

12 Q. And the -- the protocol that we described
13 about the notes and putting them on file and keeping
14 them, what's the protocol now, if you know?

15 A. Well, I don't know specifically to the lab,
16 but I can just speak that all of our notes are turned in
17 with our reports and given to the District Attorney for
18 discovery.

19 Q. And do you have any idea when that started?

20 A. I've been doing it for some time on my
21 criminal cases, but I -- I don't know. It would have
22 happened at the same time that the laboratory -- maybe
23 five years, but I'm guessing.

24 Q. All right.

25 MR. WILLOUGHBY: Your Honor, I think

1 that's where I was planning to stop. I don't know if
2 you want to start or --

3 JUDGE MANNING: Well, no. We're gonna let
4 him finish today.

5 MR. WILLOUGHBY: Okay.

6 JUDGE MANNING: But since we've been
7 listening, he -- he's -- he's --

8 I'll just tell you, you've got -- you got
9 whacked up all week long by experts. And what you got
10 whacked up on was because the written report that was
11 introduced for trial indicated that item 16, 18, and 46
12 gave chemical indications for the presence of blood.

13 The problem with that, according to the
14 experts -- I'm just saving us a whole bunch of time --
15 was that the Takayama test and the fact that you did not
16 -- the confirmatory testing did not reveal it was blood,
17 they were wound -- they were complaining that that
18 should have been reported in the report and had full
19 disclosure. So that's it in the -- that's the whole
20 thing in a nutshell about this item.

21 Now, got any questions --

22 MR. KLINKOSUM: I do briefly, Your Honor.

23 JUDGE MANNING: -- along that line? Along
24 that line.

25 MR. KLINKOSUM: I'll try and be -- you

1 have my word I'll try and be brief.

2 JUDGE MANNING: All right.

3

4

5

CROSS-EXAMINATION

6 BY MR. KLINKOSUM:

7 Q. Agent Deaver, a phenolphthalein test is a
8 cate- -- is within a category of tests called
9 presumptive tests.

10 A. That's correct, sir.

11 Q. If you get a positive phenolphthalein, you go
12 to step two which is a confirmatory test.

13 A. That's correct.

14 Q. And in this case the Takayama test.

15 A. That's correct.

16 Q. And in this case, on items 16 and 18, the ones
17 in question -- obviously you got negative
18 phenolphthalein on 17, correct?

19 A. That's correct.

20 Q. Well, on items 16 and 18 where you got a
21 positive phenolphthalein, you got a negative result on
22 the Takayama test.

23 A. That's correct.

24 Q. Okay. Which means you could not confirm that
25 those substances were blood.

1 A. That's correct. Beyond a scientific
2 certainty, that's correct.

3 Q. And on item number 18, you went so far as to
4 do the Ouchterlony test.

5 A. Actually -- well, actually like 17, 18 -- I
6 heard some testimony about that. Let me just explain
7 real quick to -- so everybody will understand.

8 When you couldn't -- when -- if you got a
9 negative Takayama, that was it. You were done. But the
10 way we work, Ouchterlony was an overnight run, and I
11 might set up a long series of stuff so that I could keep
12 moving, and put that stuff in the oven and let it cook
13 all night.

14 And then the next day, well, I may not have
15 done Takayama yet because I'm setting up to -- you know,
16 to be prepared. So I would just report everything. I
17 reported there's negative results here, but even if I'd
18 got a positive result I wouldn't have said that that's
19 human. We don't know what kind of substance it is, but
20 it's human substance. Does -- does that make sense?

21 Q. It does, because at the -- at the point you
22 got a negative Takayama, you couldn't say that was
23 blood?

24 A. Scientifically, that's correct. I could give
25 an opinion on it.

1 Q. Well, you could -- you would have to say that
2 the confirmatory test for blood was negative.

3 A. That's correct.

4 Q. All right, now. Your lab report, the
5 typewritten formal copy, Defendant's Exhibit 31. Do you
6 have that up there?

7 A. I do, sir.

8 Q. That came from a handwritten report, correct?

9 A. Yes, sir. That's the -- the part of my notes
10 on there is the report form that -- that we used, that's
11 correct.

12 Q. Exactly. Before the formal report is typed
13 up, you had to submit a handwritten form, correct?

14 A. That's correct.

15 Q. And the handwritten form is the language that
16 is tracked in the formal report, correct?

17 A. That's correct.

18 Q. Okay. And for items 16 and 18, you wrote that
19 they gave chemical indications for the presence of
20 blood, correct?

21 A. *(Reviewed document.)*

22 Q. Second page, second paragraph from the bottom,
23 I believe.

24 A. Okay. From my notes or from the report?

25 Q. From the formal report.

1 A. Yes, that's correct.

2 Q. And that was the language tracked from the --
3 from the report that you wrote by hand, correct?

4 A. That's correct.

5 Q. You did not report that you got a negative
6 result on items 16 and 18 for Takayama, correct?

7 A. That's correct.

8 Q. Okay. You didn't -- so anyone reading your
9 formal report would not have known that you could not
10 scientifically confirm that was blood, correct?

11 A. That's correct.

12 Q. Okay.

13 A. Well, I mean, if they understood the language,
14 they would know that, sure.

15 Q. Well, if they understood the language, they
16 would have had some training as a serologist presumably,
17 correct?

18 A. Well, I would tell anybody who asked me what
19 that meant. I mean, that's what the report was for.
20 People can ask me as an expert.

21 Q. That's right. When this report was generated
22 and this case was going to trial, did you call Mr. Ford
23 and tell -- and advise him that you got negative
24 Takayama?

25 A. No, I did not.

1 Q. Okay. You weren't called at trial, either,
2 were you?

3 A. No, sir, I was not.

4 Q. Okay. So lay people sitting on a jury that
5 saw your lab report with no training in serology, would
6 it be safe to assume that they would not know from your
7 lab report that you got a negative Takayama?

8 A. I couldn't say what -- what they would think.

9 Q. Okay. Well, anyone without training in
10 serology or blood typing or any type of scientific --
11 without any type of scientific knowledge, Mr. Deaver,
12 looking at that, wouldn't common sense tell you they
13 wouldn't know that you had done Takayama?

14 A. I couldn't comment on that, sir. I just -- I
15 wrote the report and it's used the way it's used. I --
16 I mean, I wouldn't -- I wouldn't comment about what they
17 would think about it.

18 Q. Okay. Well, there was no -- there is nothing
19 in your report, your formal report that says you got --
20 you performed a Takayama test and achieved a negative
21 result, correct?

22 A. That's correct.

23 Q. There's nothing in there, correct?

24 A. In my formal report, that's correct.

25 Q. So anyone reading your report would not read

1 anywhere that you performed a Takayama test and got a
2 negative result on 16 and 18, correct?

3 A. That is correct.

4 Q. All right.

5 JUDGE MANNING: We -- we know that now,
6 Mr. Klinkosum. We got that answer --

7 MR. KLINKOSUM: Well, I --

8 JUDGE MANNING: -- four times.

9 MR. KLINKOSUM: If I may do --

10 JUDGE MANNING: All right.

11 MR. KLINKOSUM: -- just briefly, a few
12 more questions, Your Honor.

13 Q. BY MR. KLINKOSUM: Agent Deaver --

14 MR. KLINKOSUM: May I approach the
15 witness?

16 JUDGE MANNING: You certainly may.

17 Q. BY MR. KLINKOSUM: Agent Deaver, where --
18 if you have Defendant's Exhibit 31, I'd like to point
19 something out to you.

20 A. What is that?

21 Q. It's your formal report. Do you have a copy
22 of that?

23 A. There's some stuff up here. Here it is right
24 there.

25 Q. Okay. Down on the front page, down in the

1 lower left-hand corner. Now, your analysis of 16 and 18
2 included Takayama tests, correct?

3 A. That's correct.

4 Q. Down in the lower left-hand corner of that
5 report is your name typed in, P.D. Deaver, correct?

6 A. In the left-hand bottom corner of the front
7 page?

8 Q. I'm sorry, the right-hand bottom corner of the
9 front page. I apologize.

10 A. Yes, sir.

11 Q. All right. And then there's a slash mark and
12 the name J.S. Towe, correct?

13 A. That's correct.

14 Q. So your name was printed on this report,
15 correct?

16 A. Yes, sir.

17 Q. And above this there is a statement that
18 reads, "This report represents a true and accurate
19 result of my analysis on the items described," correct?

20 A. That's correct.

21 Q. Now, going to your bloodstain pattern
22 interpretation. You said you were called to the crime
23 scene by CCBI, correct?

24 A. That's correct.

25 Q. And you went out there on September 26th of

1 1991, correct?

2 A. Yes, sir.

3 Q. And you spent a total of an hour and five
4 minutes out there, correct?

5 A. I believe you're correct. I apologize. I
6 have too many piles of paper.

7 MR. KLINKOSUM: May I approach the
8 witness, Your Honor?

9 JUDGE MANNING: Yes.

10 Q. BY MR. KLINKOSUM: I'm handing you what I have
11 marked --

12 JUDGE MANNING: How about giving back
13 Mr. Willoughby what you're not gonna use so you'll only
14 have one piece of paper to look at?

15 THE WITNESS: Who, me?

16 JUDGE MANNING: Yeah. Just put aside --
17 if you're through questioning him about the lab report
18 and the lab notes, let's just move that aside so you
19 only have one piece of paper.

20 THE WITNESS: Okay. Thank you.

21 MR. KLINKOSUM: This would be Defendant's
22 Exhibit 32.

23 *(Defendant's Exhibit 32 identified.)*

24 Q. BY MR. KLINKOSUM: Do you have this?

25 A. Somewhere.

1 Q. Okay.

2 A. Yes, sir, that's correct.

3 Q. That is your report regarding your bloodstain
4 pattern analysis?

5 A. Yes, sir, that's correct.

6 Q. Will you read the -- that paragraph that you
7 wrote?

8 A. Yes, sir. *(The witness appeared to be reading*
9 *from the document.)*

10 "In response to an assignment for crime
11 scene assistance from Assistant Supervisor Jeb
12 Todd, the writer traveled to the 1500 block of
13 South Blount Street. After a briefing on the
14 case by the investigators, a bloodstain
15 examination was conducted on the pavement
16 around the victim's body and of -- and of the
17 victim's body.

18 "Dripping stains were noted to the west of
19 the body. No stains of interest were noted on
20 the victim's body. After this examination the
21 writer returned to his duty station."

22 Q. You wrote that "dripping stains were noted to
23 the left side of the body."

24 A. To the west side of the body.

25 Q. To the west side of the body. I apologize.

1 Is that correct?

2 A. That's correct.

3 Q. And then after that that no -- what was that
4 phrase? "No stains of"?

5 A. No stains of interest were noted on the
6 victim's body.

7 Q. Okay.

8 MR. KLINKOSUM: May I approach the
9 witness, Your Honor?

10 JUDGE MANNING: Yes.

11 Q. BY MR. KLINKOSUM: Agent Deaver, I'm gonna
12 show you what are marked as Defendant's Exhibits 12 and
13 13 under the Victim section of the exhibit notebook.

14 *(Defendant's Exhibits Victim 12 and 13*
15 *identified.)*

16 Q. BY MR. KLINKOSUM: I'll hand you those
17 photographs. Those are the photographs of the body of
18 Jacquetta Thomas, correct?

19 A. Yes, sir.

20 Q. Okay. And that's what you saw when you went
21 out there at 1:20 on September 26th, 1991?

22 A. That's correct.

23 Q. Okay. You stated "No stains of interest were
24 noted on the victim's body," correct?

25 A. That's correct.

1 Q. Okay. So you didn't notice any delineated
2 lines around her neck?

3 A. I did.

4 Q. You did?

5 A. Uh-huh.

6 Q. But that wasn't of interest to you?

7 A. It wasn't a part of the question that was
8 asked of me at that time.

9 Q. Okay. You didn't note -- did you notice any
10 blood dripping on her leg -- on her left knee?

11 A. I did.

12 Q. Was that not of interest to you?

13 A. It wasn't -- answered the question -- well,
14 it was of interest. All of that was of interest to me.
15 I looked at it, yes.

16 Q. But you didn't write anything about it in your
17 report, correct?

18 A. No, sir.

19 MR. KLINKOSUM: May I have a moment, Your
20 Honor?

21 JUDGE MANNING: You may.

22 *(Pause in proceedings.)*

23 MR. KLINKOSUM: May I approach, Your
24 Honor?

25 JUDGE MANNING: You may.

1 MR. KLINKOSUM: This is Exhibit 53.

2 *(Defendant's Exhibit 53 identified.)*

3 Q. BY MR. KLINKOSUM: Agent Deaver, I'll hand you
4 what's been marked as Defendant's Exhibit 53 in the
5 exhibit notebook and ask you to read the highlighted
6 portions, specifically the second and third paragraphs
7 on page 1.

8 A. *(The witness appeared to be reading from the*
9 *document.)*

10 "In a circle of approximately eight feet
11 in diameter around the body, there were I
12 would say several small spatters which reacted
13 to luminol, indicating possible sling-off
14 spattering and smearing of a substance which
15 gave a reaction to the luminol processing.

16 "Also, in a northwest direction from the
17 body, there was what appeared to be smear wipe
18 marks on the asphalt. These smear wipe marks
19 would be consistent with either cloth, skin,
20 or other fibers coming in contact with blood
21 and possibly being saturated with blood and
22 the material being wiped along the top surface
23 of the asphalt. In this situation it would be
24 indicative of the body possibly turning itself
25 over after blood had gotten on some clothing

1 articles."

2 Q. Okay. Then I'll ask you, that phrase
3 indicating possible sling-off spattering: you stated
4 earlier that in your opinion at a -- at a scene such as
5 in a crime scene such as this, the perpetrator would not
6 have blood on them, correct?

7 A. That's correct.

8 Q. Or that it's possible they would not have
9 blood on them, correct?

10 A. It was my opinion that they wouldn't
11 necessarily find it on them or -- yes, correct.

12 Q. In a situation where there's more than one
13 person, and if the second person was standing near the
14 body as it was being beaten, would it be possible there
15 would be some -- some sling-off or some spatter on the
16 second person?

17 A. Well, actually, the term is castoff, just to
18 get it right.

19 Q. I'm sorry. It's castoff.

20 A. But there is a possibility that that would
21 happen, but what you would have to have is you'd have to
22 have the person in line with the -- with the assault.

23 In other words, if I'm swinging a bat, they'd
24 have to be behind the person where -- where that's going
25 on and almost directly in a straight line with them.

1 But yeah, that's a possibility.

2 Q. It's a -- it's a distinct possibility --

3 A. Certainly.

4 Q. -- that the person could have been standing --
5 the second person, if there was one there, could have
6 been standing behind Jacquetta Thomas --

7 A. Sure.

8 Q. -- and whatever blunt-force injury she
9 received would have cast off blood onto that second
10 person, correct?

11 A. That could happen.

12 Q. And that -- that's because a principle of the
13 movement of blood is that in a forceful trauma, blood
14 moves in the direction of the trauma, correct?

15 A. Well, that's not a strict principle. It's
16 what we see and we observe, but that can change based on
17 the situation. But generally you're correct.

18 MR. KLINKOSUM: No further questions.

19 MR. WILLOUGHBY: If I might have -- beg
20 your indulgence for just a few, Your Honor.

21

22

23 REDIRECT EXAMINATION

24 BY MR. WILLOUGHBY:

25 Q. Agent Deaver, did -- in your formal reports,

1 you don't report a positive or a negative of a
2 particular test for phenolphthalein or luminol or
3 Takayama or any of those sort of things.

4 A. No. None of those individual specific tests,
5 no.

6 Q. Isn't the wording that's used in your formal
7 reports based on what combination of test results,
8 whether you get a positive on one and a negative on the
9 other? Such as, if you get a positive phenolphthalein
10 and a negative Takayama, that's described as the
11 chemical indication of blood?

12 A. That's correct.

13 Q. That's not your choice of words --

14 A. No.

15 Q. -- is it?

16 A. No. I -- I didn't come up with that.

17 Q. Is that dictated based on the CALEA crime lab
18 accreditation folks and the SBI --

19 A. That's correct.

20 Q. -- as to what wording you put on that
21 report --

22 A. That's correct.

23 Q. -- based on the test?

24 A. Yes.

25 Q. So you don't just get to write whatever you

1 want to on the report.

2 A. No, huh-uh. No.

3 Q. All right. Thank you.

4 MR. KLINKOSUM: Your Honor, I apologize.
5 I need to ask a few more questions briefly, please.

6 JUDGE MANNING: On what he just asked --

7 MR. KLINKOSUM: Yes.

8 JUDGE MANNING: -- him about?

9 MR. KLINKOSUM: Yes. That's it.

10 JUDGE MANNING: All right.

11

12

13

RECROSS-EXAMINATION

14 BY MR. KLINKOSUM:

15 Q. So your testimony here today is that you had
16 no choice in what you wrote on your reports, correct, as
17 far as --

18 A. Correct.

19 Q. -- the language is concerned?

20 A. I mean, I -- as far as the language is
21 concerned, yeah, I think -- yeah, that's correct.

22 Q. Okay. So this was a policy of the SBI.

23 A. That's correct. We were given the wording
24 that we were to use based on the results that we
25 achieved. That's correct.

1 Q. And so this came from over you, correct?
2 Above you?

3 A. A lot higher than my paygrade is what they
4 generally say.

5 Q. A lot higher than your paygrade. So, in other
6 words, a decision within the SBI that a negative
7 Takayama test or negative Ouchterlony test would not be
8 reported was made by your superiors.

9 A. Uh -- what was decided --

10 JUDGE MANNING: Above his paygrade.

11 MR. KLINKOSUM: Excuse me, Your Honor?

12 JUDGE MANNING: Above his paygrade.

13 A. Well, let me just answer it this way. What
14 was decided is how we should state those -- those
15 results. Whether if somebody made a conscious decision
16 not to report a negative Takayama, I couldn't tell you.

17 Q. BY MR. KLINKOSUM: Okay.

18 MR. KLINKOSUM: Nothing further.

19 JUDGE MANNING: Monday morning, ten
20 o'clock. We'll be in recess until Monday morning at ten
21 o'clock.

22 *(The bailiff recessed court.)*

23 THE WITNESS: Are you through with me,
24 Judge?

25 JUDGE MANNING: Yes, sir.

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THE WITNESS: Thank you, sir.

JUDGE MANNING: Agent Deaver is excused.

MR. KLINKOSUM: Yes, Your Honor. Thank
you.

JUDGE MANNING: All right.

(Court recessed at 1:39 p.m.)

(End of transcript.)
