

1 Q I notice there was a blue blanket there in the
2 photographs.

3 A Right. In the report that I generated, I have
4 a general description. It says clothing and cloth
5 items, foot of bed. What I can do is look at any notes
6 that we made in the laboratory in terms of processing to
7 see if there's anything more descriptive.

8 Q Okay.

9 A Okay.

10 THE COURT: Mr. Sanders, is there a question
11 pending?

12 MR. SANDERS: We're waiting for an answer,
13 your Honor.

14 THE COURT: Okay. Sorry.

15 THE WITNESS: In looking at the notes, the
16 only item in the processing that is mentioned
17 regarding A dash 18 is the felt pad.

18 BY MR. SANDERS:

19 Q All right. But in the notes it indicates
20 A dash 18 is a felt pad and --

21 A Some other items, some clothing items, yes,
22 sir.

23 Q Unknown clothing items?

24 A That's correct.

25 Q How many different bags were there that you put
26 these items into, the clothing and the felt pad and
27 whatever else you collected?

28 A The clothing on the floor near the doorway was

1 put into a paper sack. The panties were put into a
2 large envelope. The white shorts that had been stuffed
3 in her mouth were placed in a paper sack. The felt
4 cloth and other things that were related to that were
5 placed in a paper sack, and the bedding itself was
6 placed temporarily in a large plastic bag until we
7 transported it to our drying room.

8 Q Four or five different bags?

9 A At least.

10 Q Now, if you had collected that same evidence in
11 2010, you would not have done it that way; is that
12 correct?

13 A In terms of collecting it and putting it into a
14 paper bag?

15 Q Right, and putting -- having the items together
16 in the paper bag?

17 A I'm not sure why I wouldn't have grouped them
18 the same way. The -- the purpose sometimes of -- in
19 fact, the purpose of putting things into individual bags
20 usually is to keep them from contacting or -- or one
21 thing being transferred to the other. If at the scene
22 they were already sitting on top of each other, that's
23 already happened. So the -- the thought process of
24 preventing any sort of transfer, that has potentially
25 already occurred.

26 The idea of not putting the group of clothes
27 that were found near the doorway in the same bag with
28 the panties, which they were in two separate bags, that

1 would hold because at the scene they're not in contact
2 with each other. The -- the items that were at the foot
3 of the bed, again, were pretty much in contact with each
4 other; therefore, it would have gone into the same bag.
5 I would not fault an investigator or crime scene person
6 if they decided to individually package each one or if
7 they decided to put them, again, in the same container
8 with the same conditions.

9 Q You used the word in contact sometimes. We use
10 the word contaminate. You don't want one item of
11 evidence to contaminate another item of evidence?

12 A That's right. We call it transferring,
13 transfer of evidence from one thing to another.

14 Q The felt pad was placed into a bag with
15 something that you don't remember what it was at this
16 point?

17 A It was some article of clothing, yes, sir.

18 Q All right. You said -- you mention a pair of
19 white shorts?

20 A Yes, sir.

21 Q That is separate from the panties that were on
22 the floor; is that correct?

23 A That's correct.

24 Q I noticed when we were looking at the
25 photographs, there was one photograph where it appeared
26 there was a white cloth over the victim's face.

27 A That would be the pair of shorts.

28 Q You used the term that it was stuck in her

1 mouth?

2 A Yes, sir.

3 Q What portion of the white shorts was inside her
4 mouth?

5 A That, I couldn't tell you exactly which portion
6 it was without looking at the photographs, seeing if
7 it's reflected in a photograph to be able to determine
8 that.

9 Q Did you yourself actually observe the white
10 shorts in her mouth?

11 A I don't have any independent recollection of
12 it. I'm virtually positive I did. See where I might
13 have noted that. In terms of when we collected the
14 sample, Item A dash 17, I listed the description of
15 white shorts; location, victim's mouth. It was packaged
16 in a paper sack.

17 Q The reason I ask is because I know sometimes
18 when one person gets to the scene and maybe they take a
19 guess or they make an assumption, I bet that was a gag.
20 Then someone else might say, yeah, okay. From now on
21 we'll call that the gag.

22 In this case you saw the condition of the
23 victim's face when you went in the room; is that
24 correct?

25 A I saw the condition of the victim's body and
26 how she was laid out.

27 Q Okay.

28 A I --

1 Q You noted that because of decomposition that
2 had gone on one thing that had happened was her tongue
3 was protruding from her mouth because it was large and
4 swollen; correct?

5 A I believe that's true, yes, sir.

6 Q And that her top dentures were protruding from
7 her mouth, and they weren't seated on her gums the way
8 they would normally be?

9 A That's true.

10 Q And her lower dentures had been pushed out of
11 her mouth; is that correct?

12 A I know we collected the lower dentures at the
13 autopsy, so they -- they probably were still with her
14 when they moved the body.

15 Q So my question was, from the condition that her
16 mouth was in from the decomposition, where in her mouth
17 was the shorts?

18 A I -- I don't know that I can tell you without,
19 again, looking at the photographs at the scene.

20 Q Okay. Did you do any swabs of her face?

21 A No, sir.

22 Q Or tape lifts?

23 A Let me check my notes on that one. No, sir, we
24 did -- according to my notes, did five tape lifts, one
25 of each arm, one of each leg, and one of the torso area.

26 Q Was a swab taken of the mouth?

27 A No, sir, not at the scene.

28 Q You, in your career, have collected a number of

1 samples of semen and sperm and tested them for DNA; is
2 that correct?

3 A Yes, sir.

4 Q Is there a window of opportunity to do that
5 where the sperm or the semen has to be collected in a
6 certain amount of time or you're not able to do that
7 type of testing?

8 A It all depends on circumstances. If you're
9 speaking with regard to a homicide victim who is not
10 ambulatory, it is best to collect it as soon as possible
11 to minimize the effect of degradation that could take
12 place. Sperm cells, as I mentioned yesterday with
13 regard to the extraction process, are fairly hardy and
14 seem to be able to survive a period of time through the
15 decomposition process; however, I'm sure they have their
16 limits.

17 When we speak of sexual assault victims who are
18 ambulatory, the major concern there is the ability of
19 the seminal fluid to drain out or flush out during
20 bathing or normal activity, so the presence of seminal
21 fluid and the preservation of it will depend upon a
22 number of different factors.

23 The enzyme that we use or acid phosphatase that
24 we use for detecting the presence of semen and the other
25 protein called pre30, they're fairly stable in terms of
26 in a dry stain or dry state. So an idea, in fact, this
27 is what we do at the crime scenes prior to the
28 autopsies, if we suspect there might be a sexual

1 assault, that's why we take a sample at the time, take
2 it and dry it.

3 Once you dry the sample, the degradation
4 process slows down tremendously and enhances your
5 chances then of being able to detect either the enzymes
6 or the proteins or in this case in years later the DNA.

7 Q So if -- so one of the things that would
8 degrade the semen sample would be moisture?

9 A Yes, sir. In fact, in a biological setting,
10 moisture is absolutely necessary for any sort of
11 biological process to take place. If you can dry a
12 sample out, get the moisture out of there, really about
13 the only thing that will degrade it is if you bombard it
14 with UV light and break up the DNA.

15 If you can stop -- if you can dry it out, the
16 bacterial processes and degradation processes should
17 come to a virtual halt. That and freezing, keeping it
18 cold.

19 Q Okay. So that was my next question.

20 What about heat? Does heat further the
21 degradation process of the sample?

22 A If moisture is present. If moisture is not
23 present, then heat will have a minimum effect on it.

24 Q Let me ask a different question then. Back in
25 1985, you went to the crime scene on Monday afternoon of
26 a woman that was seen alive on Friday afternoon and
27 evening.

28 A Okay.

1 Q You indicated that you were able to collect
2 some samples of semen or sperm?

3 A Yes, sir.

4 Q Now, do you have an opinion as to whether or
5 not you were -- would have been able to collect that --
6 those samples of semen and sperm had you gotten there a
7 week from Monday?

8 THE COURT: Is that a hypothetical question?

9 MR. SANDERS: It is.

10 THE WITNESS: It is.

11 THE COURT: Can you answer it?

12 THE WITNESS: I believe I can. The samples
13 on the vaginal swab, I don't know that we would have
14 been able to do the serological testing on them in
15 terms of being able to identify the presence of an
16 enzyme called acid phosphatase or the P30 protein,
17 which is used to identify seminal fluid.

18 The sperm cells probably still would have been
19 there.

20 BY MR. SANDERS:

21 Q Because of their hardness?

22 A Not only hardness. There were a lot of them.
23 When I looked at the sperm count, I made a slide. There
24 were a lot of sperm cells that were present. The felt
25 pad, that stain may have dried immediately or would
26 definitely not have been subjected to the same moisture.
27 I have no doubt that even today we could possibly go to
28 that as long as it's been kept dry and still get at

1 least the P30 protein detection, definitely the DNA,
2 maybe even the acid phosphatase and it's been 25 years.

3 Q Now, going the other way, from the tests you
4 did, from the examination that you made, do you have the
5 capability of determining how long the sperm had been
6 there before you collected it or before the death of the
7 victim?

8 A Not in terms of the -- of the testing that I
9 did. That would be information that you would need to
10 piece together from other -- other facts that are
11 gathered.

12 Q That you don't have?

13 A That's correct.

14 Q Okay. By the way, your partner, that was
15 Mr. Stockwell?

16 A Yes, sir.

17 Q Did he have the training required for
18 collecting and processing evidence?

19 A Yes, sir. In fact, in many ways, Mr. Stockwell
20 left our laboratory a number of years ago, we lost a
21 great expertise. He was a tremendous, tremendous
22 criminalist.

23 MR. SANDERS: Thank you, your Honor. No
24 further questions on cross-examination.

25 THE COURT: Redirect.

26 MR. THOMAS: Thank you, your Honor.

27

28

REDIRECT EXAMINATION

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BY MR. THOMAS:

Q The blood transfer that you spoke about earlier on cross-examination, is that something that the victim herself could have done where she put that blood transfer on there?

A I have absolutely no information with regard to how that could have gotten there. Pretty much any hypothetical that you put up which has her blood on it and it touched either the doorjamb or the part of the wall would be an explanation. I have nothing I can offer you on that.

Q Okay. So there's all these possibilities out there --

A Yes.

Q -- to explain the blood transfer that you saw on Items A dash 23 and A dash 24?

A That's correct.

Q Okay. You talked about cell analysis, fluids draining out, and a victim that's ambulatory or I guess still alive basically.

A Yes, sir.

Q Okay. When the seminal fluids drain out, do they drain out of the vaginal area?

A Yes, sir. The logical thing would be that there's a gravity flow, and it would slowly drain out if the person is vertical and moving around.

Q So if the victim in that hypothetical is

1 wearing panties, they would drain out on the panties?

2 A It could, yes, sir.

3 Q Okay. And then assuming -- this is another
4 hypothetical. Assume that the victim had sex and
5 there's a pair of panties on the ground that has no
6 seminal fluid or no semen on there.

7 If you had to come to a conclusion as to how
8 soon that victim had sex prior to the discovery of the
9 body, would you have any opinion as far as that goes?

10 MR. SANDERS: Objection, your Honor.
11 Incomplete hypothetical.

12 MR. THOMAS: If I could rephrase it?

13 THE COURT: I can -- I can rule on this
14 before you rephrase it if I can ask Mr. Jones, can you
15 answer that question?

16 THE WITNESS: I'm not sure I truly understand
17 what he was trying to get at.

18 THE COURT: I think so too. I think it may
19 be an incomplete hypothetical, may be vague. You may
20 restate the question.

21 BY MR. THOMAS:

22 Q Okay. What's the significance to you of there
23 being an absence of seminal fluid on the panties that
24 were found by the bed? What did that indicate, if
25 anything, to you?

26 A If there's no seminal fluid on the panties,
27 then the suggestion is that the panties were not worn
28 after there was sexual intercourse.

1 Q And then as far as determining whether or not a
2 person had sex or sexual intercourse with someone, what
3 would you think is the most significant as far as
4 evidence? Do you think it would be a vaginal swab of
5 some sort or pubic hair or some hair found in the pubic
6 area of the victim?

7 A Definitely the vaginal sample. In fact, when
8 we have what we consider sexual assault cases, because
9 of the large back log we have, we want to look at the
10 most probative samples first.

11 THE COURT: Probative?

12 THE WITNESS: Yes, sir.

13 THE COURT: What does that word mean?

14 THE WITNESS: For me, it means the one that
15 would answer the question as succinctly as possible.

16 THE COURT: Thank you.

17 THE WITNESS: And the answer for a sexual
18 assault case would be the vaginal swab. You look at
19 that. If you can identify the presence of semen on
20 it, then do some sort of characterization or DNA
21 typing of that. That will then answer the question
22 with regard to the presence of a semen donor.

23 If nothing was found in regard to semen, then
24 you start looking at other samples. Pubic hair
25 combings, hairs that are collected around the body,
26 things related to the body.

27 If that doesn't pan out, then you start looking
28 at -- we've already -- actually, before that, you look

1 for other stains, such as the one we found on the felt.
2 Then you look for hairs that are found in the pubic
3 combing or on the body.

4 If that doesn't pan out, then you start looking
5 at the vacuum sweepings that you took or you look for
6 things of that nature.

7 If that doesn't pan out, then you start looking
8 at the cigarette butts that were collected out of the
9 living room.

10 It's a progression of things that you want to
11 look at starting with those things that are more closely
12 related to the question you're trying to answer.

13 Q And then as far as the pubic hair is concerned,
14 if you find some other foreign hair in the pubic hair
15 combings, can you do the same type of DNA analysis that
16 you would do on a semen stain or vaginal swab?

17 A It depends on the condition of the hair. If
18 the hair has a good root structure to it, yes, you can.
19 If it does not have a good root structure, then there is
20 ultimate DNA testing that we don't do in our laboratory
21 that really is more comparative testing. You need to
22 have someone that you're going to be directly comparing
23 that type of result to.

24 Q Okay. Then there was discussion about
25 fingernail scrapings that you had with Mr. Sanders.

26 Do you recall that?

27 A Yes, sir.

28 Q As far as fingernail scrapings, just because

1 somebody had a struggle with someone else doesn't
2 necessarily mean that there will be foreign DNA on those
3 fingernail scrapings?

4 A That is true. In terms of the approach that we
5 take now with regard to crime scenes, rather than say
6 there's a chance there isn't DNA, we take the chance
7 there is DNA, and we will take it. We may not get
8 anything. It may be that all the DNA would be the same
9 as the victim's because they scratched themselves.

10 Q As far as -- as far as those fingernail
11 scrapings go back in 1985, it wasn't one of those things
12 where, yeah, 20 years from now we're going to be able to
13 do DNA testing on these fingernail scrapings so we need
14 to start collecting these fingernail scrapings?

15 A The idea of DNA in 1985 was something out of a
16 science fiction magazine. It wasn't even -- for us in
17 the lab, wasn't even on the horizon. We were fully
18 involved in serology, looking at blood and semen and
19 saliva and those types of physiological fluids, trying
20 to do genetic-marker typing on proteins and enzymes and
21 antigens.

22 As I say, the -- the idea of doing DNA typing,
23 when I look at where we've come, I'm absolutely amazed.
24 Absolutely amazed. To think of what we were capable of
25 doing in 1985 and what we're capable of doing today,
26 it's unbelievable.

27 Q So basically any suggestion that we can look at
28 something in 2011 and kind of play Monday-morning

1 quarterback and say, well, 25 years ago you should have
2 done this, you should have collected that, you should
3 have collected this, would be something that would be
4 unfair?

5 MR. SANDERS: Objection, your Honor.
6 Argumentative.

7 THE COURT: Sustained.

8 BY MR. THOMAS:

9 Q As far as the sperm count was concerned, you
10 said that you saw a lot of sperm or the sperm count was
11 a lot on the slide that you looked at?

12 A Yes, sir.

13 Q When an individual is alive, does that sperm
14 count naturally decrease as the hours and minutes go by?

15 A Yes, sir. In sexual assault cases involving a
16 live victim, there's an interval called a post-coital
17 interval from the time the sexual intercourse takes
18 place until the time the kit is collected. In general,
19 the longer the period of time, the less amount of
20 seminal fluid and/or sperm you will find present.

21 There are, of course, exceptions to this, but,
22 in general, as time goes by, you will have less and
23 less. The sooner after a particular incident that you
24 collect a sample, the better off you are.

25 Q And what about in the situation hypothetically
26 of a person who dies shortly after having sexual
27 intercourse?

28 A If there's an opportunity for the -- for this

1 drainage that we talked about, then the post-coital
2 interval between the time of the intercourse and time of
3 collection will be less critical.

4 Q So you would still, in this hypothetical that I
5 just posed to you, you would expect there to be also a
6 lot of sperm or the sperm count to be high?

7 A I would expect it to be -- to decrease less.
8 If there's very little there to start with, I would
9 expect there to be very little there when I collect the
10 sample. If there was a lot there when I started or when
11 it happened, then I expect there to be a lot there when
12 I collect the sample. There would be very little
13 difference. It depends on how much was there to start
14 with.

15 MR. THOMAS: Nothing further.

16 THE COURT: Mr. Sanders.

17 MR. SANDERS: Thank you, your Honor. Couple
18 questions.

19 **RECROSS-EXAMINATION**

20 BY MR. SANDERS:

21 Q Sperm count is relative?

22 A Yes, sir.

23 Q When you say high sperm count, that could mean
24 an individual that had a lot of sperm or an individual
25 that had a larger than average amount of sperm, but it
26 had taken some time.

27 You wouldn't be able to tell which one?

28 A I'm not sure I understand the second part, the

1 larger amount that's taken some time.

2 THE COURT: The Court's going to sustain its
3 own objection to vague. You want to restate?

4 MR. SANDERS: Yes, your Honor. Thank you.

5 BY MR. SANDERS:

6 Q You said you found a large amount of sperm
7 cells.

8 A Relatively large amount compared to other
9 sexual cases that I worked, yes, sir.

10 Q All right. But you have no knowledge of the
11 person that -- that -- the sperm count of the person
12 that made that deposit?

13 A Absolutely. That's correct.

14 Q So it could have been -- you can't tell the
15 time based on just looking at what you looked at?

16 A No, sir.

17 Q Okay. In other words, from the information
18 that you had, the sexual experience of the victim could
19 have been at the time of death, hours before the time of
20 death, or after death?

21 A That's probably true. I would say it probably
22 wasn't days before in terms of she had intercourse,
23 several days passed, and then she died.

24 Q Right.

25 A I'm fairly certain of that.

26 Q Okay.

27 A If you take those days and shrink it down into
28 hours and so forth, I can't tell you.

1 Q All right. And one of the questions I asked
2 you at the preliminary hearing, isn't it true that you
3 would be unable to state that this particular victim had
4 consensual sex or nonconsensual sex before the time she
5 died?

6 A That is true. I have no information at all
7 with regard to the conditions that were present or what
8 circumstances were present. Pretty much all I can do is
9 make an assumption, but I can't tell you how it got
10 there or why it got there.

11 Q The prosecutor just asked about those blood
12 marks in the hallway.

13 A Yes, sir.

14 Q I believe that you said that you took those to
15 the lab and compared them to 16 different profiles; is
16 that correct?

17 A There was -- there were at least 16 different
18 reference blood samples that had been submitted over the
19 course of the investigation to us.

20 Q What do you mean by that?

21 A That have been submitted to us?

22 Q Yes.

23 A There were names and I'm somewhat -- I'm
24 presuming occurred during the course of investigation, a
25 person of interest, somebody for elimination purposes.
26 Those reference blood samples were submitted to the
27 laboratory. As they came in, we would analyze them and
28 compare them to the results we got for the -- initially,

1 for the -- for the stains we looked at, and then later
2 on, we were asked to compare them to these two blood
3 stains.

4 In each of these cases we eliminated the blood
5 stains as coming from the other people whose blood we
6 had received with the exception of the victim. With
7 regard to the blood stains, the typing we got was the
8 same as the victim's type.

9 Q These 16 different profiles, these are like
10 potential suspects?

11 A They could be. I don't know what they truly
12 were in the minds of the investigators.

13 Q All right.

14 A There were at least 16 subjects.

15 MR. SANDERS: Thank you, your Honor. Nothing
16 further on recross.

17 THE COURT: Mr. Thomas.

18 **FURTHER REDIRECT EXAMINATION**

19 BY MR. THOMAS:

20 Q Out of those 16 subjects, none of them matched
21 either the blood stains that you found in the hallway
22 and none of them matched the semen sample that you had?

23 A The blood stain in the hallway matched the
24 victim. That was one of the reference samples that we
25 had. The semen samples, sperm cell fractions of those
26 samples, off the vaginal swab and off the felt pad, that
27 did not match any of those other reference samples that
28 we got that I analyzed.

1 Q As far as the other reference samples that you
2 analyzed, did you have names attached to those reference
3 samples?

4 A Yes, sir.

5 Q Did the name Yablonsky ever get examined by
6 you?

7 A No, sir.

8 MR. THOMAS: Nothing further.

9 THE COURT: Mr. Sanders. We'll take a
10 ten-minute recess right now, ladies and gentlemen.
11 You're admonished that it is your duty not to converse
12 among yourselves or with anyone else about any matter
13 connected with this case nor form or express an
14 opinion on it until it's submitted to you.

15 (Whereupon a recess was taken.)

16 (Whereupon the following proceedings were held in open
17 court in the presence of the jury:)

18 THE BAILIFF: Remain seated. Come to order.
19 Court is now in session.

20 THE COURT: Back on the record in the case of
21 People of the State of California versus John Henry
22 Yablonsky who is here with Mr. Sanders. Mr. Thomas is
23 here for the People along with his investigating
24 officer. Donald Jones is on the witness still under
25 oath.

26 MR. SANDERS: I wasn't quite fast enough,
27 your Honor, to say no further questions.

28 THE COURT: You needed to review some things.