

1 the witness, I will have to allow cross examination.

2 BY MR. KESLER: I--I didn't think it was new
3 information. I may--I might have misunderstood. I
4 thought he said something about thorns. If I'm in
5 error, I'm--I'm in error. I won't ask about it.

6 BY THE COURT: You may proceed with the
7 examination of the witness.

8 Q. Just tell the--the jury where all you went, wherever it
9 was.

10 A. Uh, we just went all de way down side de creek on both
11 sides, went back of de house, by de pond, wheat field; we went all
12 in the house, just back and forward; that's all.

13 BY MR. KESLER: That's all, your Honor.

14 BY THE COURT: You may stand down. Call your
15 next witness, please.

16 BY MR. KESLER: The defendant rests, your Honor.

17 BY THE COURT: Is the State ready for rebuttal?

18 BY MR. ALLGOOD: If your Honor please, I am going
19 to have some rebuttal, uh, and I--I believe I can take
20 one of my rebuttal witnesses before lunch. Might I
21 have just seven minutes, until a quarter after the
22 hour, to--to get that lined up?

23 BY THE COURT: That--that is not an unreasonable
24 request. It normally is granted at the resting of
25 both cases, and I am going to allow it at the resting
26 of the defense's case. If you would step back into the
27 jury room for a few moments, we'll call you out
28 momentarily.

29 (JURY OUT)

1 BY THE COURT: Court is in recess.

2 (RECESS)

3 * * * * *

4 FOLLOWING THE RECESS, ALL MEMBERS OF THE COURT, INCLUDING THE
5 JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE
6 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

7 BY THE COURT: Show the jury in, please.

8 (JURY IN)

9 BY THE COURT: Call your first witness in
10 rebuttal, please.

11 BY MR. ALLGOOD: If your Honor please, the State
12 would recall Michael West briefly in rebuttal.

13 DOCTOR MICHAEL WEST,

14 upon being called to testify as a witness in rebuttal on behalf of
15 the State, having been previously sworn, testified as follows, to-
16 wit:

17 BY THE COURT: Doctor West, you've previously been
18 sworn and testified in this case. I remind you you're
19 still under oath. You may proceed.

20 BY MR. ALLGOOD: Thank you.

21 DIRECT EXAMINATION BY MR. ALLGOOD:

22 Q. Just for the record's sake, you're the same Doctor
23 Michael West who testified in here previously, is that correct?

24 A. Yes, sir.

25 Q. Doctor West, uh, by virtue of the fact that you are--uh,
26 have been qualified as an expert, you were allowed to sit in during
27 the presentation of Doctor Richard Souviron, is that correct?

28 A. Yes, sir.

29 Q. Doctor, was there anything that was presented in the--in

1 the testimony and the presentation of Doctor Richard Souviron which
2 has in any way changed any of your opinions as previously expressed
3 on this witness stand?

4 A. No, sir.

5 Q. Doctor, if you would, take for a minute if you will and
6 explain to the ladies and gentlemen of the jury, uh, the hazards,
7 the difficulties that are inherent in the use of acetate overlays
8 as a method of identifying bite mark evidence.

9 A. We talked earlier about what do you look for to determine
10 did these teeth make this mark in this material. That comes down
11 to comparing the class and individual characteristics. The class
12 is the indi--uh, the characteristics that are going to be your
13 common to, uh, individuals within a group. All central incisors
14 are going to be big in the maxilla and all laterals are going to be
15 small. The individualizing characteristics are those minute areas,
16 the little chips, the little dings, the little high points on
17 teeth. The ability to say that a pattern is a bite mark is
18 determined, not by its overall shape, is it doughnut shaped, is it
19 semi-circular; the thing that allows you to say it is a bite mark
20 is being able to find enough individual characteristics or evidence
21 that shows you this mark came from those teeth. The marks that we
22 examined in this case are not prototypical normal doughnut shaped.
23 They are the atypical type. Uh, there are plenty of individualiz-
24 ing characteristics in my analysis that leads me to that opinion.
25 The problem with the acetate overlay and this is something that
26 I've lectured on for the last six or seven years and was published,
27 when you take that stone model and if you push it into wax, you
28 push it into styrofoam, you paint the ends of it with ink, and then
29 copy it or trace it, you're taking this three dimensional object

1 and shrinking it down flat. You are also eliminating all the
2 individualizing characteristics. On Doctor Souviron's analysis
3 with the tracing, he's got two black lines to demonstrate the
4 morphology and shape of the two central incisors. Uh, we were able
5 to show that those two teeth were different, one had a slight chip
6 and the other one had a scooped out area. Those factors are not
7 included in that acetate. My study to show the error of acetate
8 overlay, uh, analysis, we took a group of people and had them bite
9 their arm, uh, not hard, just enough maybe hold five to ten seconds
10 of pressure on their arm, and then they released, we wiped it with
11 the paper towels, and then we shot a photograph of that bite mark.
12 We then took impressions of their teeth, poured them up and made
13 the models. We then went through several different methods of
14 constructing acetate overlays, wax, styrofoam, or ink. We then
15 took the acetate overlays and went back to the life size pictures
16 of the arm that they bit themselves with their acetate overlay and
17 they didn't match. Now if you stand there and watch these teeth
18 inflict a bite, take those teeth and make an acetate overlay and
19 then compare that overlay to the bite and find that it excludes
20 that, you'll come to the realization that this is an improper test.
21 Uh, sometimes you will find an acetate overlay that will match.
22 I'm of the opinion that you cannot incorporate enough error to make
23 it a match, but my research and my publication has shown you cannot
24 use that technique to exclude an individual.

25 Q. Now, Doctor, you mention your publication, of course that
26 publication wasn't, uh, just something you wrote and stuck in an
27 article some place, it was first validated and approved by a--a
28 committee on the Journal of the Forensic Sciences, is that correct,
29 Journal of--of Forensic Sciences?

1 A. The editorial board of the Journal of the American
2 Academy of Forensic Science, yes, it's a peer review journal. It's
3 submitted, it's reviewed, if there's anything that they wish to be
4 revised or restated, they return it to you; once it's accepted,
5 then they publish it.

6 Q. Now there were two cases involved in that instance I
7 believe, is that correct, in that article?

8 A. Yes, sir.

9 Q. Those two instances, if you would, explain those for the
10 ladies and gentlemen of the jury.

11 A. Uh, I just realized I, uh--I had forgotten, uh, one of
12 those cases was the case that me and Doctor Souviron first worked
13 together, State versus Don Horne. Uh, there was a--an alleged rape
14 with a bite mark on the face and, uh, we made acetate overlays, uh,
15 using the conventional methods and they--

16 Q. And to be fair--to be fair to Doctor Souviron, at that
17 point in time the conventional method did not include the laying it
18 on the--the--the copy machine, isn't that correct?

19 A. Yes, sir.

20 Q. Y'all made the--the acetate overlays using a wax
21 impression which was--is another way of making acetate overlays,
22 right?

23 A. Yes, sir.

24 Q. Go ahead.

25 A. I'm--I'm still of the opinion that even though you use a
26 photocopier, you're taking these three dimensional models and
27 making a flat picture of them.

28 Q. Right. But go ahead.

29 A. Okay.

1 Q. Describe those two things.

2 A. Uh, we had three suspects in the case and the construc-
3 tion of the overlays, we not only eliminated A and B, but we
4 eliminated C who was our, uh--the man who through our other
5 analysis said that we, you know, had matched. Uh, this was what
6 made me start wondering why did we get a false positive in that
7 case, and, uh, the proper way, I feel to construct an overlay, if
8 you're going to use an overlay, if you have a bite mark on
9 someone's wrist, you take the models of those teeth, dip them in
10 ink and then use the model and press it back on to the--someone
11 who's anatomically similar. If you've got a three year old little
12 girl of fifty pounds, try to find a three year old girl of about
13 fifty pounds that's about the same structure statue-wise and make
14 a rubber stamp, if you would, with the teeth on the skin, and then
15 take a photograph of it from the same perspective as your bite mark
16 photograph. Then you could make an overlay from either the actual
17 bite or from the inked bite and then compare those. Those we have
18 shown have a very high degree of correlation; the others we
19 continue to get false negatives.

20 Q. And of course this--this, uh, has been published in the
21 literature I think in November of nineteen ninety in the Journal of
22 Forensic Science--

23 A. Yes, sir.

24 Q. --and has been subjected to the--the appropriate peer
25 review, is that correct?

26 A. Yes, sir.

27 BY MR. ALLGOOD: I've no further questions, your
28 Honor.

29 BY THE COURT: Cross examination.

1 BY MR. KESLER: Briefly, your Honor.

2 CROSS EXAMINATION BY MR. KESLER:

3 Q. Is an acetate overlay a technique that is not generally
4 accepted?

5 A. No, sir. It is accepted.

6 Q. As is direct comparison?

7 A. Yes, sir.

8 Q. There is--the truth is there's no perfect technique to
9 compare these bite marks or alleged bite marks.

10 A. I would have to say that the most optimum standard or
11 optimum test would be a direct comparison of the study models to
12 the actual wound.

13 Q. And that's your opinion?

14 A. Yes, sir.

15 Q. What I'm asking you though is there any technique that is
16 one hundred percent fool proof?

17 A. No, sir.

18 Q. Now when you forensic odontologists employ, uh, these
19 techniques you don't abandon common sense as a factor, do you?

20 A. I--I think that--that must be included, yes, sir.

21 Q. In this acetate overlay experiment, you said we did,
22 are--are you--you directly participated in that?

23 A. I--I didn't bite myself, no. I--I supervised the biting,
24 I supervised the photography, I supervised the acetate overlays.

25 Q. Okay. So you--you--it's--it's a fair statement that you
26 conducted the experiment.

27 A. Yeah, I believe that we had, uh, myself, Doctor Barsley;
28 I think there were four authors on that article.

29 Q. Okay. And the results were not to your satisfaction?

1 A. I--I don't understand.

2 Q. Well let me put it another way. When you set out--when
3 you and the others ran that experiment it was because you had
4 doubts about this particular technique?

5 A. Yes, sir. The scientific method says, number one, you
6 come up with a question. Then you develop a hypothesis says how
7 can we test this question; then you run a test and then you analyze
8 those results back.

9 Q. And that's what you did; you followed that scientific
10 method?

11 A. Yes, sir.

12 Q. And then you wrote an article about it?

13 A. Yes, sir.

14 Q. And you call it a--a case report?

15 A. Yes, sir.

16 Q. And you submitted that for publication?

17 A. Uh-huh.

18 Q. And you say, uh, the editorial board accepted that and
19 they verified it.

20 A. Yes, sir.

21 Q. They didn't repeat the experiment.

22 A. I don't believe so.

23 Q. They read the material you submitted.

24 A. Yes, sir.

25 BY MR. KESLER: Will the Court indulge me just
26 a moment?

27 (MR. KESLER CONFERS WITH MR. WALTERS)

28 Q. The photographs that you introduced, I believe they are
29 the thirty-three series, 33-1--

1 A. Yes, sir.

2 Q. --et cetera. Those are all photographs that you took and
3 pre--and actually printed or had printed?

4 A. Had printed.

5 Q. Now they are not one to one?

6 A. Those photographs, no, sir.

7 Q. Does one to one refer to life size?

8 A. Yes, sir.

9 Q. Okay. And those photographs, that being Exhibits 33-1,
10 et--et al, et cetera--

11 A. Yes, sir.

12 Q. --they are two dimensional objects, are they not?

13 A. Yes, sir.

14 BY MR. KESLER: Nothing further.

15 BY THE COURT: Redirect.

16 REDIRECT EXAMINATION BY MR. ALLGOOD:

17 Q. Those photographs that you took of your comparisons,
18 Doctor, why did you take those photographs?

19 A. The purpose of those photographs was to allow the
20 individuals who are going to decide this--the question--

21 Q. This jury?

22 A. Yes, sir. Well sometimes, you know, I send them up to
23 the sheriff or the D.A. and let them look at them, if they don't
24 like them well then, you know. (Witness laughs) It's got to go
25 through a series of approvals. But, uh, the whole idea of those
26 photographs was to demonstrate what I was doing and allow them to
27 look at it themselves as far as what are the relationships of these
28 teeth and how do they relate to the pattern on the skin, and if you
29 have this pattern and you lay another one over on the side, you

1 move it back and let them look, say, does that look like this came
2 from that. That's what those photographs are for.

3 Q. And in those photographs you are in fact comparing three
4 dimensional object to three dimensional object, is that not
5 correct?

6 A. Yes, sir.

7 BY MR. ALLGOOD: I've no further questions of this
8 witness, your Honor, and I'd ask that he be finally
9 excused. He has another trial to make.

10 BY MR. KESLER: Yes, sir.

11 BY THE COURT: He's finally discharged?

12 BY MR. KESLER: Yes, sir.

13 A. Thank you.

14 BY THE COURT: Thank you. You may go.

15 BY MR. ALLGOOD: There is one thing, your Honor,
16 before he leaves. There is an article which he I
17 think needs to leave here before he goes. If he'll
18 leave that with my office.

19 A. I'm unaware.

20 BY MR. ALLGOOD: If--if I could have him to wait
21 just a minute, your Honor, I--I--I may very well have
22 another rebuttal witness, but I'm not prepared to take
23 that witness at this point. If I might have the
24 Court's indulgence at this particular point in time.

25 BY THE COURT: This witness is finally
26 discharged. You may step into the hall if you need
27 a moment to confer with him.

28 BY MR. ALLGOOD: Thank you, your Honor.

29 (MR. ALLGOOD LEAVES COURTROOM BRIEFLY)

1 BY MR. ALLGOOD: Thank you, your Honor.

2 BY THE COURT: Now you may call your next
3 witness.

4 BY MR. ALLGOOD: If your Honor please, I may
5 very well have one other witness. During this
6 seven minute recess all I did was prepare Doctor
7 West--Doctor West on the rebuttal. Uh, I--

8 BY THE COURT: Would you like to step back
9 into the hall to see?

10 BY MR. ALLGOOD: Well, if your Honor please,
11 it may take a little bit while is the reason I'm
12 saying that. I was wondering if the Court would--

13 BY THE COURT: How long?

14 BY MR. ALLGOOD: Well I was going to ask the
15 Court if we could break for lunch is what I was
16 going to ask. Now if the Court is unwilling to do
17 so, then I understand and I'll do what I have to do.

18 BY THE COURT: I believe the question is how
19 long?

20 BY MR. ALLGOOD: Till a quarter of.

21 BY THE COURT: More than thirty minutes; more
22 than fifteen minutes?

23 BY MR. ALLGOOD: No, sir, till a quarter of.

24 BY THE COURT: And at that time you will be
25 ready to present the next witness or you will be
26 able to--

27 BY MR. ALLGOOD: All of them.

28 BY THE COURT: --announce to me--

29 BY MR. ALLGOOD: One way or the other.

1 BY THE COURT: --whether you are going to
2 have another witness or not.

3 BY MR. ALLGOOD: That's exactly right.

4 BY THE COURT: It might speed things up if I
5 go ahead and recess for the noon recess at this
6 time and begin again at one o'clock. I am going to
7 recess you a little bit early for the noon recess.
8 I have to keep track of time and try to make sure
9 that logistically everything is an efficient use of
10 time so I'm going to recess you at this time until
11 one o'clock. Please during this recess, the same
12 instructions that has previously been given to you
13 applies.

14 Bailiff, please be getting the vans and every-
15 thing ready for transportation. Please step back in
16 the jury room. As soon as they're ready, they will
17 call you out.

18 (JURY OUT)

19 BY THE COURT: Court is in recess until one
20 P.M.

21 (RECESS)

22 * * * * *

23 FOLLOWING THE NOON RECESS, ALL MEMBERS OF THE COURT, INCLUDING
24 THE JUDGE, COURT REPORTER, ATTORNEYS, CLERK, BAILIFFS, AND THE
25 DEFENDANT BEING PRESENT, THE FOLLOWING PROCEEDINGS WERE HAD:

26 BY THE COURT: Are you ready to proceed?

27 BY MR. ALLGOOD: Yes, sir, your Honor.

28 BY THE COURT: Show the jury in, please.

29 (JURY IN)