

1 IN THE DISTRICT COURT OF MAYES COUNTY,

2 STATE OF OKLAHOMA FILED IN THE DISTRICT COURT
MAYES COUNTY, OKLAHOMA

3 OCT 3 1978

4 THE STATE OF OKLAHOMA,

) ELOISE GIST, Court Clerk

5 Plaintiff,)

) BY

) Deputy

6 -vs-

) Case No. CRF-77-131

) CRF-77-132

7 GENE LEROY HART,

) CRF-77-133

8 Defendant.)

9
10 PRELIMINARY HEARING

11 VOLUME V

12
13 HEARD BEFORE: Honorable Jess B. Clanton, Jr., Special Judge

14 June 13, 1978

15
16 A P P E A R A N C E S

17 FOR THE STATE OF OKLAHOMA:

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I N D E XVOLUME VPage

WITNESSES FOR THE STATE: (Continued)

Thomas D. Jordan	
Direct Examination by Mr. Wise	723
Cross Examination by Mr. Isaacs	733

Ronald Clodfelter	
Direct Examination by Mr. Fallis	734
Cross Examination by Mr. Isaacs	741

Bruce Plank	
Direct Examination by Mr. Wise	742
Cross Examination by Mr. Isaacs	747

Jimmy Ray Beck	
Direct Examination by Mr. Wise	749
Cross Examination by Mr. Isaacs	754

Larry Bowles	
Direct Examination by Mr. Fallis	765
Cross Examination by Mr. Isaacs	772

AFTERNOON SESSION

789

Janice Davis	
Direct Examination by Mr. Wise	789
Cross Examination by Mr. Isaacs	798

Ann G. Reed	
Direct Examination by Mr. Fallis	808
Cross Examination by Mr. Isaacs	821
Redirect Examination by Mr. Fallis	839
Recross Examination by Mr. Isaacs	841

E X H I B I T S

No.	Description	Identified	Offered	Received
SX-37	Masking tape from Flashlight	Vol. 3	733	733
SX-38	Paper from flashlight	Vol. 3	747	747
SX-41	Tape from pajama top	Vol. 3	740	741
SX-46	Tape from Milner hand	Vol. 3	740	741
SX-69	2 pieces newspaper	Vol. 4	747	747
SX-72	Roll of tape	Vol. 4	733	733
SX-74	Small portion green substance from SX-72	731	733	733
SX-75	Newspaper 4-17-77	743	747	747
SX-76	Photos by Jordan 6-19-77	727	728	728
SX-77	Photos by Jordan 6-19-77	727	728	728
SX-78	Photos by Jordan	727	728	728
SX-79	Photos by Jordan	727	728	728
SX-80	Photos by Jordan	727	728	728
SX-81	Photos by Jordan	727	728	728
SX-82	Eyeglasses	770	771	772
SX-83	OSBI Evidence Envelope w/Hart hair samples 4-18-78	793	795	797
SX-84	Saliva sample - Hart	794	795	795
SX-85	Sweepings from tent	813		

P R O C E E D I N G S

June 13, 1978

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2
3 THE COURT: CRF-77-131, 132 and 133. State vs.
4 Gene Leroy Hart.

5 Let the record show the Defendant is present with
6 counsel. State is present. Call your next witness.

7 MR. WISE: If it please the Court, State would
8 next call Mr. Tom Jordan. Mr. Jordan, would you come for-
9 ward and raise your right hand?

10 THE COURT: Do you swear to tell the truth, the
11 whole truth and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THOMAS D. JORDAN,

14 called as a witness on behalf of the State, having been first
15 duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q Mr. Jordan, state your full name to the Court and
19 the record, please?

20 A My name is Thomas D. Jordan.

21 Q And what is your occupation or profession?

22 A I'm employed as a Firearm and Tool Marks Examiner
23 with the Oklahoma State Bureau of Investigation in Oklahoma
24 City.

25 Q Now, would you tell me of your training and back-

1 ground, please, to prepare yourself for this profession?

2 A Yes, sir. I've worked in the field of identifica-
3 tion now for the past six years. My first year which I
4 spent with the Federal Bureau of Investigation in Washington,
5 D. C., where I underwent over 500 hours of classroom instruc-
6 tion in the field. The past five years have been spent with
7 the Oklahoma State Bureau of Investigation in Oklahoma City
8 under the training and supervision of Mr. Ray Landers, who
9 has had over twenty-six years of experience in the field;
10 Mr. Carlo Cloud, who has had over twenty-one years' experience
11 in the field. I also received an additional 80 hours of
12 training from the FBI Academy in Quantico, Virginia; another
13 80 hours of training from the Smith and Wesson Academy in
14 Springfield, Massachusetts; I'm a member of the Oklahoma
15 Division of the International Association of Identification;
16 Member of the National Rifle Association; a Member of the
17 Association of Firearm and Tool Mark Examiners and remain
18 current in the field, attending the annual convention of the
19 Association of Firearm and Tool Mark Examiners.

20 Q Would you explain briefly what is the specific
21 responsibility of a Firearm and Tool Mark Examiner, please?

22 A Basically, as far as the firearm identification
23 work is concerned, it's the process of identifying bullets
24 and/or cartridge cases or components of these items. These
25 having been fired from a particular weapon. Tool marks could

1 refer to any object which has made a mark or indentation on
2 another object.

3 Q And comparative tests?

4 A Comparative tests also, yes.

5 Q All right, sir. I'll hand you, Mr. Jordan, what
6 has been previously marked State's Exhibit 72, and ask if
7 you can identify that, please, sir?

8 A Yes, sir, my initials are on this item.

9 Q And can you tell me, what is that that you are
10 holding in your hand?

11 A This is a partial roll of masking tape submitted
12 to me by Technician Larry Mullins of the OSBI, June 19, 1977.

13 Q I'll now hand you what has been marked as State's
14 Exhibit No. 57. Can you positively identify that, sir?

15 A Yes, sir, my initials are also on this item.

16 Q All right, sir. How did you acquire it?

17 A These individual pieces of masking tape adhered to
18 a green plastic substance were submitted by Larry Mullins
19 on June 19th, 1977.

20 Q Do you know of your own knowledge what they were
21 removed from?

22 A To my knowledge, they were removed from the end of
23 a flashlight.

24 Q Now, what directives were given to you, or requests
25 were made of you as a firearms and tool mark expert, with

1 regards to the two pieces of evidence that you hold in your
2 hand at this time?

3 A I was asked to determine whether or not the indi-
4 vidual pieces of masking tape contained or adhered to the
5 green plastic substance was at one time united to form one
6 single unit of tape to that of the partial roll of masking
7 tape.

8 Q All right, sir. And Mr. Jordan, what tests did
9 you conduct to try to make that determination?

10 A A visual and stereoscopic examination, as well as
11 photographic examination was conducted on both these items.

12 Q All right, sir, what day did you do that, please?

13 A This particular examination was conducted on
14 June 19, 1977.

15 Q All right, sir. Was it completed the same day?

16 A Yes, sir, it was.

17 Q As a part of that examination, did you take
18 photographs?

19 A Yes, sir, I did.

20 Q And how did you take the photographs, sir?

21 A The photographs were taken through the use of the
22 MP-4 Polaroid Duplicating Camera; through the use of the
23 4 x 5 sheets of Kodak Plus film.

24 Q All right, sir. Did you bring -- at my request,
25 did you bring photographs with you to the courtroom?

1 A Yes, I did.

2 Q Would you produce them at this time, Mr. Jordan?

3 A (Witness complies.)

4 Q Mr. Jordan, I'll hand you now what has been marked
5 for purposes of identification as State's Exhibits 76 through
6 81, and I will ask you these qualifying statements:

7 Are these photographs that were taken by you
8 personally?

9 A Yes, sir, they are.

10 Q On what date, sir?

11 A These photographs were also taken on June 19th,
12 1977.

13 Q Have they been in your exclusive custody and
14 control from that date until you brought them forth in
15 this courtroom at my request?

16 A Yes, sir, they have.

17 Q Now, handing you State's Exhibit 76, I will ask
18 you briefly, what does that depict?

19 A This photograph displays the partial roll of
20 masking tape submitted to me on June 19, 1977, from Larry
21 Mullins.

22 Q What does what has been marked as State's Exhibit
23 77 depict, sir?

24 A State's Exhibit No. 77 also depicts another view
25 of the partial roll of masking tape, submitted along with the

1 other evidence.

2 Q I'll hand you what has been previously marked as
3 State's Exhibit 78. What does that depict, please?

4 A State's Exhibit No. 78 is a photograph of the
5 combined individual pieces of masking tape adhered to the
6 green plastic substance.

7 Q And State's Exhibit No. 79, what does that depict,
8 sir?

9 A State's Exhibit No. 79 also shows a combination
10 of the partial roll of masking tape, the tear comparison
11 to the individual piece of masking tape removed from the
12 green plastic substance.

13 Q And what does State's Exhibit No. 80 depict?

14 A State's Exhibit No. 80 shows a tear comparison on
15 an enlargement basis of both the partial roll of masking
16 tape and the individual piece of masking tape.

17 Q All right, sir. What does 81 depict, please, sir?

18 A 81 also shows the tear comparison on an enlarge-
19 ment basis of the partial roll of masking tape to that of the
20 individual piece and showing the gap between the break.

21 MR. WISE: If it please the Court, comes now the
22 State of Oklahoma and respectfully submits and requests that
23 State's Exhibits 76 through 81 be introduced into evidence.

24 MR. ISAACS: We have no objection.

25 THE COURT: Received.

1 Q All right, sir. Now, Mr. Jordan, turning your
2 attention to what is now Exhibit 79, will you tell us in
3 more detail, what do we have there?

4 A Again, State's Exhibit 79 depicts the end of the
5 partial roll of masking tape submitted, along with adjoining
6 end of the individual piece removed from the green plastic
7 substance. The pieces or ends were gapped to show the indi-
8 viduality of the break which led to the final conclusion
9 in my examination.

10 Q And I now hand you what has been introduced into
11 evidence as State's Exhibit 81. Would you elaborate on that
12 one, please?

13 A 81 shows in more detail, due to the enlargement
14 of the photograph, the break in the ends of the two pieces
15 of masking tape and showing the individuality of the more
16 fine detail within each break or each tear.

17 Q And what has been introduced into evidence now
18 as State's Exhibit No. 80?

19 A 80, again, shows the end of the partial roll of
20 masking tape, as well as the end of the individual piece of
21 masking tape as they were originally joined at one time.

22 THE COURT: May I see those?

23 MR. WISE: Yes, certainly, Your Honor.

24 Q Now, Mr. Jordan, from the roll of tape itself,
25 from State's Exhibit 72, was there any foreign material on it

1 when it was turned over to you?

2 THE COURT: Excuse me, Mr. Wise, which exhibit
3 number?

4 MR. WISE: The exhibit that's been marked as
5 State's Exhibit 72.

6 A (By Mr. Jordan) Yes, sir. As I recall there was
7 a small portion of the green plastic substance, similar to
8 that on the individual pieces also stuck to the partial
9 roll.

10 Q Did you remove that foreign substance from the
11 partial roll of tape?

12 A Yes, sir, I did.

13 Q I now hand you what has been marked for identifi-
14 cation purposes only as State's Exhibit 74. Can you posi-
15 tively identify that, sir?

16 A Yes, sir. My case number and my initials are also
17 on this item.

18 Q All right, sir. Would you open what has been
19 marked as State's Exhibit 74 -- excuse me -- let me ask you,
20 how did 74 -- you say these are your initials. Did you
21 prepare this?

22 A Yes, sir, I did.

23 Q At what time and under what circumstances, please?

24 A This item was sealed on June 19th, 1977, and
25 forwarded to the OSBI Laboratory.

1 Q At the same time this other examination was being
2 conducted?

3 A That's correct.

4 Q Now, if you will, please, open what has been
5 marked as State's Exhibit 74.

6 A (Witness complies.)

7 Q Are you going to have to tear the package to get
8 it out?

9 A I believe it's stuck to the inside of the package.

10 THE COURT: Why don't you state for the record
11 what you're doing?

12 MR. WISE: Yes. If it please the Court, I would
13 direct the witness to take State's Exhibit 74, which is a
14 small manilla envelope, and would you slit it down one
15 side, please?

16 A (Witness complies.)

17 Q All right, sir. Now, opening up the manilla
18 envelope, do you find inside there some other material?

19 A Yes, sir, I do.

20 Q What is it, please?

21 A This appears to be the --

22 Q You perhaps want to slit that down the following
23 end?

24 A Yes, sir.

25 MR. WISE: Let the record reflect he has now

1 opened up this envelope on two sides, which now opens up
2 to disclose the total inside portion of the envelope.

3 A (By Mr. Jordan) This is a small portion of the
4 dark green colored, plastic substance which I removed from
5 the partial roll of masking tape on June 19, 1977.

6 Q You removed that from 72?

7 A Yes, sir, I did.

8 Q And once removing it and placing it in this enve-
9 lope on June 19th, has this stayed consistently in the
10 Oklahoma State Bureau of Investigation Laboratories?

11 A To my knowledge, yes, sir, it has.

12 Q Now Mr. Jordan, based upon the expertise and
13 training that you've already testified to, and based upon
14 your years of training and based upon what you just testified
15 to as to your comparison, do you have an opinion as to the
16 comparison between what has been marked as State's Exhibit
17 72 and what has been marked as State's Exhibit 37?

18 A Yes, sir, I do.

19 Q Would you state that opinion, sir?

20 A Based upon the microscopic examination, the visual
21 examination and the photographic examinations I conducted on
22 the submitted evidence, I'm of the opinion that the both the
23 partial roll of masking tape and the individual piece removed
24 from the green plastic substance were at one time united to
25 form one single continuous unit of tape.

1 MR. WISE: If it please the Court, comes not the
2 State of Oklahoma and would respectfully submit that State's
3 Exhibits 37, 72 and 74 be introduced into evidence.

4 THE COURT: Those numbers were 37, 72 and --

5 MR. WISE: -- 74.

6 THE COURT: -- 74, received.

7 MR. WISE: Your witness, counselor.

8 CROSS EXAMINATION

9 BY MR. ISAACS:

10 Q Mr. Jordan, we don't know who tore the tape, do
11 we?

12 A I do not, no, sir.

13 MR. ISAACS: Thank you.

14 THE COURT: Redirect?

15 MR. WISE: No redirect. And Your Honor, this
16 witness is under subpoena in Oklahoma City in another matter
17 and we would certainly ask that he be dismissed so that he
18 may forthwith go to that appearance.

19 THE COURT: Very well.

20 (WHEREUPON, the witness was excused and withdrew
21 from the hearing room.)

22 MR. FALLIS: We'd call Ron Clodfelter.

23 THE COURT: Would you raise your right hand. Do
24 you swear to tell the truth, the whole truth and nothing but
25 the truth, so help you God?

1 THE WITNESS: I do.

2 RONALD CLODFELTER,

3 called as a witness on behalf of the State, having been
4 first duly sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. FALLIS:

7 Q State your name for the Court, please, sir?

8 A Ronald Clodfelter.

9 Q What's your business, profession or occupation,
10 Mr. Clodfelter?

11 A I'm employed by the Oklahoma State Bureau of
12 Investigation as a Forensic Chemist.

13 Q And would you tell His Honor how long you have
14 worked in that capacity?

15 A I've been a Criminalist Forensic Chemist for
16 approximately six and a half years.

17 Q And have you been employed by other agencies
18 besides the Oklahoma State Bureau of Investigation?

19 A Yes, I have.

20 Q What agencies, please?

21 A I was employed with the Fort Worth Police Depart-
22 ment, Criminalistics Laboratory for approximately three years.

23 Q Mr. Clodfelter, what type of educational background
24 do you have?

25 A I have a Bachelor of Science Degree, majored in

1 chemistry, which I obtained from Cameron University in
2 December of '71.

3 Q Have you received any specialized training in
4 addition to your collegiate work that pertains to your
5 responsibilities and duties at the Oklahoma State Bureau
6 of Investigation?

7 A Yes, I have.

8 Q Would you relate those for His Honor, please?

9 A I attended the University -- or Arizona State
10 University in a course called "Molecular Spectroscopy".
11 I attended Fisk Institute on Vanderbilt campus in Nashville
12 concerning gas chromatography; I've attended two forensic
13 homicide seminars, one at the University of Oklahoma and
14 one at the Oklahoma State University Extension Center in
15 Oklahoma City; I attended the Sadler Research Laboratory.
16 The course there was directed toward the interpretation of
17 infrared spectra. I've also attended the Drug Enforcement
18 Administration Special Testing Laboratory in McLean, Vir-
19 ginia; the Survey of Fibers course offered by the FBI in
20 Quantico.

21 Q Mr. Clodfelter, what would you state or how would
22 you describe the nature of work and responsibility that you
23 have with the OSBI at this time?

24 A My position is Coordinator the Serology Trace
25 Evidence Section, primarily I direct the activities of that

1 section and I'm also involved in analysis of serological
2 material and trace evidence.

3 Q "Trace evidence", what does that mean, sir?

4 A Trace evidence encompasses identification and
5 comparisons of glass, soil, fibers, rope, tape, hair - items
6 that would be particulate in nature.

7 Q In your work and responsibilities over the time
8 that you have been with the OSBI and the time you've served
9 with the City of Fort Worth, have you had experience in
10 examining exemplars and samples of tape for comparison
11 purposes?

12 A Yes, I have.

13 Q You have worked with that in your responsibility?

14 A Yes, I have.

15 Q Mr. Clodfelter, I would like to hand you, sir,
16 what has been marked for the purpose of identification and
17 I believe introduced, State's Exhibit No. 13. Would you
18 examine that, please?

19 A (Witness complies.)

20 Q Have you seen that item before this date?

21 A Yes, I have.

22 Q Would you tell His Honor when and where you first
23 saw the item?

24 A The first time that I came in contact with this
25 item was when I received it from Dennis Reimer on 6-29-77.

1 Q Where were you at that time?

2 A The Oklahoma State Bureau of Investigation Build-
3 ing in Oklahoma City,

4 Q Mr. Clodfelter, sir, I hand you what has been
5 marked for purposes of identification not yet introduced
6 as State's Exhibit No. 41. Would you examine that item,
7 please, sir?

8 A (Witness complies)

9 Q Have you seen that before this date?

10 A Yes, I have.

11 Q Can you tell the Court where you saw that item,
12 please?

13 A I received this -- I first saw it in the Oklahoma
14 State Bureau of Investigation Laboratory in Oklahoma City.

15 Q Do you recall when that was?

16 A Yes. I received it from Dennis Reimar 3-6-78.

17 Q All right, sir, and finally, I'll hand you what
18 has been marked for purposes of identification but not yet
19 introduced as State's Exhibit 46. Would you examine that,
20 please?

21 A (Witness complies.)

22 Q Can you tell His Honor if you have seen that item
23 before this date?

24 A Yes, I have.

25 Q And where?

1 A Oklahoma City at the State Crime Bureau.

2 Q Would you tell His Honor when you first saw that
3 item?

4 A I cannot tell you the exact date that I saw it
5 but it came into my custody on 6-29-77.

6 Q From whom did you receive that, please?

7 A Dennis Reimer.

8 Q Now, sir, with reference, first of all, to
9 State's introduced Exhibit No. 13, the roll of tape and
10 State's Exhibit No. 41 and State's Exhibit No. 46, did you
11 perform any duties or responsibilities with the Oklahoma
12 State Bureau of Investigation on these items?

13 A Yes, I did.

14 Q Tell His Honor what your duties and responsibilities
15 concerning these items were, please?

16 A I examined these items to determine whether or
17 not they could have, at one time, been a common piece of
18 tape, one being torn from the other.

19 Q All right, sir. And how did you go about making
20 that examination?

21 A This involved a microscopic and stereoscopic
22 examination of the ends of the tape to see if there were
23 matching edges.

24 Q And where was this conducted, please?

25 A In Oklahoma City at the State Bureau Laboratory.

1 Q Could you tell His Honor what type of findings
2 were made, if any, by you in your examination?

3 A Yes, I found the roll of tape which I don't recall
4 which State's Exhibit it is.

5 Q State's Exhibit No. 13, sir?

6 A Exhibit No. 13, I found it to have a matching
7 edge with the State's Exhibit 41, I believe the one you
8 have in your hand.

9 Q The item that I have in my hand here, sir?

10 A Yes.

11 Q All right. Now, when you say a matching edge, is
12 that what you used -- the expression, sir?

13 A Yes.

14 Q All right, and did you make any similar examination
15 concerning State's Exhibit 46 which has heretofore been
16 identified as from the hands of the Milner girl? Did you
17 make an examination concerning that item, please?

18 A Yes, I did.

19 Q And tell the Court what type of findings, if any,
20 you made concerning that item?

21 A I found that State's Exhibit 46 has a matching
22 edge with State's Exhibit 41 and that at one time, it was
23 a continuous piece with State's Exhibit 41.

24 Q So, as I understand, sir, you're saying that at
25 one time State's Exhibit 46, the item from the Milner hands

1 was joined with State's Exhibit 41, which I think has here-
2 tofore been identified as coming from the Milner pajama top?

3 A Yes, that's correct.

4 Q And then your finding that one of those two
5 items has a matching edge with State's Exhibit No. 13; is
6 that correct?

7 A Yes, that's correct.

8 Q And which of those two items was that, sir?

9 A Item 41 has a matching edge with the roll of black
10 tape.

11 Q Would that give you any basis for making a deter-
12 mination as to which of the items came from State's Exhibit
13 No. 13, the roll of tape, first?

14 A In my opinion, Item 46 would have been torn from
15 the roll of tape and then Item 41 would have been removed
16 from the roll of tape.

17 Q And is this the opinion that you hold, sir?

18 A Yes, it is.

19 MR. FALLIS: Thank you. No further questions.

20 We need to offer at this time, Your Honor, and
21 would, State's Exhibit 41 which has heretofore been identi-
22 fied as the tape from the Milner girl's pajama top and State's
23 Exhibit No. 46, identified as the tape from the hands of the
24 little Milner girl. I believe State's Exhibit 13 has been
25 heretofore introduced.

1 MR. ISAACS: No objection.

2 THE COURT: Received.

3 CROSS EXAMINATION

4 BY MR. ISAACS:

5 Q Mr. Clodfelter, we don't know anything about who
6 had possession of that tape when it was placed on the little
7 girl's body, do we?

8 A I have no personal knowledge of that.

9 MR. ISAACS: Thank you.

10 THE COURT: Redirect?

11 MR. FALLIS: None.

12 THE COURT: You may step down.

13 MR. CLODFELTER: May I be excused?

14 THE COURT: Yes, subject to the agreement that I
15 believe the OSBI has with the Defense, 24-hour notice for
16 further testimony.

17 MR. CLODFELTER: Okay. Thank you, Your Honor.

18 (WHEREUPON, the witness was excused and withdrew
19 from the hearing room.)

20 MR. WISE: If it please the Court, State would
21 next call Mr. Bruce Plank.

22 BRUCE PLANK,

23 called as a witness on behalf of the State, having been first
24 duly sworn, testifies as follows:

25 DIRECT EXAMINATION

1 BY MR. WISE:

2 Q Mr. Plank, would you state your full name for
3 the Court and record, please?

4 A Bruce Plank, P-L-A-N-K.

5 Q Mr. Plank, what is your occupation or profession?

6 A I'm a Forensic Document Examiner with the Oklahoma
7 State Bureau of Investigation.

8 Q Mr. Plank, would you tell us briefly your back-
9 ground and education to prepare you for such profession?

10 A I've been in the field of identification work
11 since 1957, starting with the Oklahoma City Police Depart-
12 ment. I spent a one year in residence training in forensic
13 document examination at Georgetown University.

14 Q All right, sir, and you've been with the OSBI
15 how long?

16 A Seven years.

17 Q Now Mr. Plank, I'm going to hand you what has been
18 previously marked but not introduced into evidence as State's
19 Exhibit No. 38, and ask have you seen that before, sir?

20 A Yes, sir, I have.

21 Q And on what occasion?

22 A It was taken out of a flashlight in the Latent
23 Print Room in the State Bureau of Investigation.

24 Q All right, sir, and when it was provided to you,
25 what was the request made of you, of your expertise, please?

1 A Well, later on, it was requested that I compare
2 it with a newspaper to see if possibly that could have come
3 from that newspaper or a newspaper similar.

4 Q All right, sir. Now I hand you what has been
5 marked for identification purposes only as State's Exhibit 75.
6 Can you identify that, sir?

7 A Yes, sir, it's a Sunday edition of the Tulsa World,
8 dated April 17, 1977.

9 Q All right, sir, and when have you had occasion to
10 refer to this item before, please, sir?

11 A It was on 3-6-78.

12 Q All right, sir, and on that occasion, what did you
13 do with respect to what has been marked as State's Exhibit 38
14 and what has been marked as State's Exhibit 75, Mr. Plank?

15 A I examined the torn newspaper that was taken out
16 of the flashlight with the Section C of the Tulsa World.

17 Q Perhaps you'd like to withdraw that at this time
18 and show us more specifically, please?

19 A (Witness complies.)

20 MR. ISAACS: Judge, if we could have a copy of
21 the technical report we would move for it at this time.

22 MR. WISE: Have you ever rendered a technical
23 report?

24 A (By Mr. Plank) No, sir, I haven't.

25 MR. ISAACS: I thought maybe we could stipulate to

1 someplace in time.

2 Q Now what you hold is what out of that paper that
3 you just withdrew?

4 A Section C, Classified Ads, part of an April 17th
5 Tulsa World.

6 Q All right, sir, and how did you make the compari-
7 son that you just told us in your prior testimony?

8 A Well, just took the torn pieces that came out of
9 the flashlight and compared them with the articles and the
10 ads of what appeared in this section of newspaper.

11 Q All right, sir. And I see you holding up something
12 that you brought with you. What is that, sir?

13 A It's just a Xerox copy.

14 Q Of what?

15 A Of the torn papers that were taken out of the flash-
16 light.

17 Q And you compared these copies that you made. Did
18 you make what you're holding in your hand from these items
19 that are contained in State's Exhibit No. 75 -- 31, excuse
20 me.

21 A These particular ones made by Larry Mullins.

22 Q All right, sir, and you compared these with that
23 newspaper?

24 A Yes, sir, I have.

25 Q From that comparison, do you have an opinion?

1 A Yes, sir. It is my opinion that the torn paper
2 that came from the flashlight matches pages 5, 6, 7, 8, 9,
3 10, 11 and 12, from Section C of the Tulsa World, April 17,
4 1977.

5 Q All right. Mr. Plank, it may have been testified
6 to before, but why is this such an unusual color?

7 A It was processed for latent prints. Although I'm
8 not real familiar with the chemical reaction, the chemical
9 used, an anhydrazant chemical, discolors the paper.

10 Q All right. Now Mr. Plank, again, I hand you
11 what's previously been marked as State's Exhibit 69, and
12 ask you if you have ever seen that?

13 A Yes, sir, I have.

14 Q And would you remove that and tell us what you
15 find?

16 MR. ISAACS: Judge, if we can save some time, I'll
17 stipulate that it's the date that it says on that one. I
18 think that one has got the date on it.

19 Q Mr. Plank, could we go perhaps with counsel's
20 stipulation directly to your opinion. Do you have an opinion
21 with regard to State's Exhibit 69, as to what's been with-
22 drawn from State's Exhibit No. 75?

23 A Yes, sir. In my opinion, the paper contained in
24 State's Exhibit 69, are the front page and the last page of
25 Section C of the April 17th, 1977, Tulsa World.

1 Q I notice that you say the front page there?

2 A Yes, sir.

3 Q I notice that's in two colors. Can you find
4 that same comparison there?

5 A Yes, sir. The front coloring in classified, the
6 word "Classified" is blue and it also appears to be such
7 on the part of the paper also.

8 Q Very well. So if I understand you correctly, Mr.
9 Plank, State's Exhibit 69, which I believe previous testi-
10 mony related, was taken from what we refer to as the "cave",
11 came from the same newspaper as State's Exhibit No. 38,
12 which was withdrawn from the back of a flashlight; is that
13 correct?

14 MR. ISAACS: Object.

15 A (By Mr. Plank) Newspaper of that date.

16 MR. ISAACS: I'll object to that. That's not
17 what he testified to. The man said it came from the same
18 date.

19 THE COURT: I think that's what his answer was
20 just now. Was that your answer?

21 A (By Mr. Plank) Yes, sir, newspaper with a date of
22 April 17, 1977.

23 THE COURT: In other words, your only comparison
24 was to the date and the newspaper; is that correct?

25 A (By Mr. Plank) Yes, sir.

1 THE COURT: Go ahead, Mr. Wise.

2 Q Would you return that?

3 A (Witness complies.)

4 MR. WISE: If it please the Court, comes now the
5 State of Oklahoma and respectfully submits State's Exhibits
6 69, 38 and 75 into evidence.

7 MR. ISAACS: No objection, Judge.

8 THE COURT: Received.

9 MR. WISE: Your witness, counselor.

10 CROSS EXAMINATION

11 BY MR. ISAACS:

12 Q Mr. Plank, your testimony about those pieces of
13 newspaper only goes to the date on each piece of paper; is
14 that correct?

15 A Not particularly the date.

16 Q Well, the date and the pages on the paper in the
17 flashlight?

18 A Corresponds with a newspaper that I did compare,
19 yes.

20 Q We're not saying that each piece of paper came
21 from the same individual newspaper from somebody, are we?

22 A No.

23 MR. ISAACS: Thank you.

24 MR. WISE: We'd have no redirect.

25 THE COURT: You may step down.

1 MR. ISAACS: Let me ask a couple of more.

2 Q Have you told us everything you know about this
3 case?

4 A Sir?

5 Q Have you told us everything you know about this
6 case?

7 MR. WISE: If it please the Court, we would object
8 to this line of questioning in the sense that this man was
9 only limited to one specific line of evidence. If he wants
10 to limit it solely about this evidence, we have no objection
11 to it.

12 THE COURT: I took that to be the nature of the
13 question.

14 MR. ISAACS: A little broad, a little imprecise.
15 Clean up my act.

16 Q Have you told us everything you know about what
17 you did in this case, Mr. Plank?

18 MR. WISE: Again, we would object. Mr. Plank
19 may have other aspects that deal with this case, Your Honor,
20 but that's not before the Court at this time.

21 THE COURT: Mr. Isaacs, I guess your question
22 refers to the newspaper comparison; is that the nature of
23 your question?

24 MR. ISAACS: Yes.

25 THE COURT: All right.

1 A (By Mr. Plank) Yes, sir.

2 MR. ISAACS: Thank you.

3 THE COURT: You may step down.

4 (WHEREUPON, the witness was excused and withdrew
5 from the hearing room.)

6 MR. WISE: If it please the Court, the State would
7 call Mr. Jimmy Beck. Mr. Beck, would you step forward and
8 raise your right hand to be sworn by the Court, please?

9 THE COURT: Do you swear or affirm that you will
10 tell the truth, the whole truth and nothing but the truth,
11 so help you God?

12 THE WITNESS: I do.

13 JIMMY RAY BECK,

14 called as a witness on behalf of the State, having been
15 first duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. WISE:

18 Q Mr. Beck, would your --

19 MR. ISAACS: Judge, could I have an opportunity
20 to speak with the witness before he testifies? This is one
21 of the people that I haven't had a chance to speak with.

22 THE COURT: Why don't we take a five minute recess.

23 (Following a five minute recess, the proceedings
24 continued as follows:)

25 Q (By Mr. Wise) Mr. Beck, would you state your name,

1 please?

2 A Jimmy Ray Beck.

3 Q Mr. Beck, you're going to have to speak up loud
4 enough so we can hear you.

5 A Okay.

6 Q Where do you live, sir?

7 A Route 1, Inola.

8 Q And Mr. Beck, have you ever met Gene Leroy Hart?

9 A Yes, sir.

10 Q Would you tell us where and when, please?

11 A At his mother's house on May 28th, 1977.

12 Q All right, sir, May 28th, 1977. What day of the
13 week, if you remember, Mr. Beck?

14 A That would be a Saturday.

15 Q All right, sir, and what was the occasion for you
16 being there?

17 A I went with Brother Norman Carey to --

18 Q Now, Brother Carey is a minister, is he not?

19 A Yes, sir.

20 Q Is he related or just your minister?

21 A He's a fellow minister.

22 Q Oh, you're a minister as well; is that correct,
23 Mr. Beck?

24 A Yes, sir.

25 Q All right, sir. But you're friends as well, I

1 gather?

2 A Yes, sir.

3 Q Now, were you together that day?

4 A Yes, sir.

5 Q And who else was there, please?

6 A At Mrs. Buckskin's house?

7 Q Yes, sir.

8 A Mrs. Buckskin, her son Gene, and I believe it's
9 her nephew Kirby.

10 Q Okay, and then who else was with you in your
11 group?

12 A Just Brother Norman and I.

13 Q Just Brother Norman and you; all right. And what
14 was your purpose? Tell me -- you say Mrs. Buckskin, what
15 is her first name, if you recall?

16 A Ella.

17 Q And where was the location of the home that you
18 visited?

19 A South of Locust Grove.

20 Q Okay. Now, can you tell me, Mr. Beck, what was --
21 I think I asked you, perhaps I didn't give you a chance to
22 answer fully. What was the occasion for you being there?

23 A Brother Norman and I were going fishing that day
24 and we stopped down there to -- he wanted to borrow some
25 rod and reel.

1 Q All right. How were you introduced to Mr. Hart?

2 A As Ella's son Gene.

3 THE COURT: I can't hear. You're going to have
4 to speak up a bit.

5 Q Would you repeat your answer, please?

6 A As Mrs. Buckskin's son Gene.

7 Q All right. And where was he? Would you tell us
8 to the best of your memory where was he in the home when
9 you saw him or where were you introduced to him?

10 A Him and Brother Norman had been talking in the
11 back bedroom and they came out.

12 Q All right, sir, what time of the day was this?

13 A This was approximately 7:00 o'clock in the morning.

14 Q All right, sir, and then what did you do that
15 day? Did you go fishing?

16 A Yes, sir.

17 Q All right, who all went fishing?

18 A Brother Norman and I.

19 Q All right, did you return back to Mrs. Buckskin's
20 home?

21 A Yes, sir.

22 Q Later that evening?

23 A In the afternoon.

24 Q All right. What did you do when you returned,
25 please?

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A Well, we had returned to Brother Norman's and picked up his stepson, then we went back and dug some worms at Ella Mae's house.

Q Okay. And on that occasion, did you see Gene Leroy Hart?

A I don't remember.

Q Okay. Now, if you were to ever see Gene Leroy Hart again, would you recognize him?

A Yes, sir.

Q Do you, in fact, see him anywhere in the courtroom?

A Yes, sir.

Q Would you tell us where he is and what he's wearing, please?

A He's wearing glasses and a brown shirt and seated approximately -- (indicating).

Q All right, sir. Now, is there anything different about his appearance today as to when you saw him?

A His hair was longer and he's wearing different glasses.

Q What were the glasses like that he was wearing?

A Black horn rims.

Q Did they have a shape that you recall, anything unusual about them?

A Not really.

Q Do you think you could recognize them if you saw

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1 them again?

2 A Yes, sir.

3 MR. WISE: Your Honor, may I have just a moment?

4 (At this point in the proceedings, Counsel for
5 the State leaves the courtroom and returns with a box which
6 is marked State's Exhibit 82 for identification.)

7 Q Mr. Beck, I'm going to show you what's been marked
8 for identification purposes as State's Exhibit 82. Would
9 you examine those, please?

10 A (Witness complies.)

11 Q Do those look at all familiar to you?

12 A No, sir.

13 Q Can you tell me about the ones that Mr. Hart had
14 on the day you saw him?

15 A They were just like horn rim glasses, not that
16 type though.

17 MR. HART: All right. I have no further questions.
18 Your witness, counselor.

19 MR. ISAACS: No, he's your witness, Mr. Wise, and
20 it's my turn to examine the witness.

21 CROSS EXAMINATION

22 BY MR. ISAACS:

23 Q Mr. Carey -- excuse me -- Mr. Beck, how long did
24 you see Gene Leroy Hart?

25 A Approximately -- about an hour. He was there at

1 the house.

2 Q Were you in his presence all that time?

3 A No, sir.

4 Q When you got there, Mr. Hart was in the back
5 bedroom, was he not?

6 A Yes, sir.

7 Q What kind of shoes was he wearing that morning?

8 A He was barefooted.

9 Q What kind of clothes did he have on?

10 A A pair of blue jeans.

11 Q Shirt?

12 A No.

13 Q Mr. Norman Carey went in the back bedroom and
14 talked with him, didn't he?

15 A Yes, sir.

16 Q How long were they in the back bedroom together?

17 A Approximately fifteen to twenty minutes.

18 Q Then, after he talked to Gene, what happened?

19 A They came out and we had breakfast.

20 Q You're not telling us that beyond any doubt those
21 are not the glasses that he had on, are you?

22 A Those are not the glasses he had on.

23 Q You could be mistaken about that, couldn't you?

24 A I don't think so.

25 Q Well, what I'm getting at, is that's the best of

1 your memory what he had on; right, the ones you described?

2 A Yes, sir.

3 Q But you could be mistaken about the glasses that
4 he had on that morning at his mother's house, couldn't you?

5 MR. WISE: If it please the Court, the answer
6 has been asked and answered several times.

7 THE COURT: Sustained.

8 Q You're not telling us that beyond any doubt those
9 weren't the glasses that he was wearing, are you?

10 MR. WISE: If it please the Court, I thought the
11 Court just sustained the objection, Your Honor.

12 MR. ISAACS: No, Judge, I've never asked him that.

13 THE COURT: I thought you had asked that question.

14 MR. ISAACS: Pretty close to it.

15 THE COURT: The objection is sustained.

16 Q Have you ever seen Gene at any other time, Mr.
17 Beck?

18 A No, sir.

19 Q That's the only time you've ever seen him?

20 A Yes, sir.

21 Q Have you told me everything you know of this case?

22 A Yes, sir.

23 Q Norman's stepson was there, too; is that correct?

24 A I don't think so.

25 Q You don't remember whether he was present?

1 A No, sir.

2 MR. ISAACS: Thank you.

3 MR. WISE: We have no further questions of Rev.
4 Beck and would ask that he be excused so he can go about
5 his normal life.

6 THE COURT: Very well.

7 MR. WISE: If it please the Court, the State would
8 next call Mr. Larry Bowles.

9 MR. ISAACS: Judge, at this time, could we take
10 up a matter in chambers, something that we need heard before
11 noon and before the next witness?

12 THE COURT: Do you care to reveal the subject
13 matter of it?

14 MR. ISAACS: No, sir.

15 THE COURT: All right. I would ask that the
16 Defendant, counsel - State and Defense - and the court
17 reporter retire to chambers.

18 (WHEREUPON, the following proceedings were had
19 in chambers:)

20 THE COURT: Let the record show that we are pre-
21 sent in chambers with the Defendant Mr. Hart, his counsel,
22 State by Mr. Fallis and Mr. Wise and Mr. Hobbs and Mr.
23 Shaffer and that Mr. Pitchlynn is not present.

24 MR. ISAACS: Judge, I'd like the record to reflect
25 that there is no newspaper or news media people here.

1 THE COURT: I believe that is correct. We have
2 several security officers present but no reporters. Mr.
3 Pitchlynn just entered the room.

4 Go ahead, Mr. Isaacs.

5 MR. ISAACS: Judge, could we have an Order that
6 this is to be a closed session and the subject matter dis-
7 cussed here is not to be discussed by any Officer of the
8 Court or anyone in this room with the news media?

9 THE COURT: Well, until I know the subject matter,
10 I don't know that I'll enter the Order.

11 MR. ISAACS: At this time, Your Honor, we would
12 move for a hearing on our Motion to Suppress which was
13 timely filed and we'd like to have that suppression motion
14 closed to the public and to the news media. Our reason
15 being we don't feel like that Mr. Hart can receive a fair
16 trial due to the publicity attached to this case if that
17 suppression issue here is open to the public. I feel like
18 our suppression motion is good and that it should be heard
19 in camera, outside the presence of the press.

20 THE COURT: Is this the motion that goes to the
21 suppression of any evidence found at the time or seized at
22 the time of Mr. Hart's capture?

23 MR. ISAACS: Yes.

24 THE COURT: To my knowledge, and correct me if I'm
25 wrong, Mr. Isaacs, but has any such evidence been offered

1 into evidence?

2 MR. ISAACS: No, sir, but I think through their
3 next witness they're going to offer something.

4 THE COURT: The one that's presently taking the
5 witness stand, Mr. Bowles?

6 MR. ISAACS: Bowles.

7 MR. HOBBS: Your Honor, is this the motion that
8 was filed earlier, the general Motion to Suppress? That's
9 the only Motion to Suppress the State's ever been served
10 with.

11 THE COURT: I believe it is. I think I've seen
12 it one time.

13 Mr. Wise, do you want to comment for the State?

14 MR. WISE: Only that, Your Honor, that the next
15 witness, Mr. Larry Bowles, is a duly qualified member of
16 the Oklahoma State Bureau of Investigation. He is being
17 called because of his participation in the arrest and cap-
18 ture of Gene Leroy Hart.

19 THE COURT: Do you anticipate that there will be
20 certain evidence offered through his testimony that might
21 be the subject of this motion, Mr. Wise?

22 MR. WISE: I think that - and I'll ask Mr. Fallis
23 to respond, because he is to handle the direct examination
24 of this witness. I've already had in the courtroom the box
25 with the eyeglasses in it which the Court has had an oppor-

1 tunity to view.

2 THE COURT: Mr. Fallis, would you like to respond
3 further, if there's any other evidence that might be the
4 subject of this motion?

5 MR. FALLIS: Judge, the only item that will be
6 alluded to by Mr. Bowles would be the glasses worn by the
7 Defendant Hart at the time of his arrest and his manner of
8 dress. Physically, his dress will not be introduced by
9 the witness but merely described.

10 THE COURT: I take it then, Mr. Isaacs, that the
11 glasses will be the subject of your motion?

12 MR. ISAACS: The subject of the motion will be
13 the glasses and also we plan to present argument that the
14 arrest was illegal.

15 MR. WISE: If it please the Court, the State's
16 response to the request -- I think some time ago, and I'm
17 only bringing this up so we can be on an even keel. We may
18 be making the same request Mr. Isaacs is at some future
19 date but we've had unfortunate experience in the past. We
20 had a motion in limine, I distinctly remember, which I
21 attempted to have that motion heard in chambers, in camera,
22 as I think I was entitled to because of the delicacy of the
23 question. I believe that with the urging of Mr. Isaacs or
24 somebody was urging - a member of the press came in - and as
25 the Court may recall, sat down in chambers and demanded

1 appearance. And we were ordered to go back out in the court-
2 room and argue that motion in the full scale of the court-
3 room and at that time I withdrew the motion and it is now
4 moot. But the point I'm making simply is that the State
5 has, on occasion, at least once, asked for an in camera
6 hearing on our motion that we thought was important to us,
7 that we thought injurious to the State's presentation of the
8 case and we were denied that opportunity.

9 THE COURT: Mr. Isaacs, why do you feel that it
10 would be prejudicial to your client to have the motion hear-
11 ing in open court?

12 MR. ISAACS: I just feel like the stigma attached
13 to the suppression motion would be that the Defense has
14 something to hide and I don't feel that my client can get a
15 fair trial if the press writes that he has something to hide
16 or the news media says he's got something to hide. We're
17 here to make our record on the illegal arrest and illegal
18 seizure of Mr. Hart's personal property as incident to that
19 unlawful arrest.

20 MR. WISE: We would --

21 THE COURT: Excuse me, Mr. Wise. Let me ask Mr.
22 Isaacs -- why do you feel that this case is any different
23 than any other Preliminary Hearing in which we hear these
24 motions in open court all the time?

25 MR. ISAACS: Because the publicity attached to it,

1 Judge. This case is being tried to the newspapers. The
2 newspapers are here, they write about it every day, televi-
3 sion people interview people every day, everybody talks
4 about the case in the press, Mr. Pitchlynn and I have made
5 no statements to the press and don't intend to and I think
6 it would unethical for us to do so at this time because of
7 certain problems involved with this case. And we wouldn't
8 be looking out for the best interests of our client if we
9 didn't urge that this motion be heard in camera and that
10 each and every law enforcement officer and each member of
11 the Prosecutor's staff be ordered by the Court not to discuss
12 this case with anyone pertaining to what occurred in chambers
13 at this time.

14 MR. WISE: Our only response, Your Honor, is that
15 the State is entitled to the same public trial as the Defen-
16 dant is.

17 THE COURT: Well, this is not a trial.

18 MR. WISE: Is it not a fact that the same question,
19 raising the subject again, though, Your Honor, that Miss
20 Susan Witt insisted that she be allowed in chambers she said
21 if a record is being made -- as I recall her position, and
22 she, I think, was speaking for the media -- that if a record
23 was being made that they were entitled to be here and didn't
24 consider it exception to the public meeting law.

25 THE COURT: I'm not conducting this Preliminary

1 Hearing for the benefit of the press. The fact that they
2 are here is incidental for the purpose of which we are
3 here as far as I'm concerned.

4 MR. WISE: I appreciate that, Your Honor. I'm
5 just refreshing the Court's recollection of what we've had
6 previously, had a like or similar matter on behalf of the
7 State.

8 THE COURT: Motion of the Defendant is denied.
9 Exception noted.

10 MR. ISAACS: Thank you, Judge. Now, that we've
11 made our record, I think the record will stand on that.
12 Appreciate it.

13 THE COURT: Let's return to the courtroom.

14 MR. ISAACS: Judge, could we have just another
15 minute here. Could everyone in this room be admonished not
16 to comment on the proceedings that were held here in chambers
17 to the members of the press? The reason that such comment
18 could be to the detriment of my client's chances for a fair
19 trial.

20 THE COURT: Mr. Wise -- get Mr. Wise back in here.
21 What is there, Mr. Isaacs, about our discussion in camera
22 concerning your motion that you feel would be to your client's
23 detriment?

24 MR. ISAACS: It gives the appearance that the
25 Defendant has something to hide and if Mr. Wise or Mr. Fallis

1 go in front of the cameras, that they went back there and
2 urged their Motion to Suppress, Motion to Dismiss, based on
3 the illegal arrest, it gives us the appearance that we are
4 trying to hide behind some technicality. Due to the publici-
5 ty involved in this case, making standard motions of that
6 nature attract a lot of attention. You know the old adage,
7 "Where there's smoke, there's fire".

8 MR. WISE: If it please the Court, we're all
9 Officers of this Court and I take issue with the connotations
10 and the innuendoes that are being made by --

11 MR. ISAACS: I made no innuendoes, Mr. Wise. I
12 didn't mean to.

13 MR. WISE: We're all guided by the same ethical
14 codes and standards as each other, Your Honor.

15 THE COURT: Gentlemen, what is discussed in camera
16 is not for the public view and that is why it's an in camera
17 hearing and I will so order that you not discuss the request
18 by this Defendant outside of this room or to other persons
19 other than those inside this room at this time.

20 MR. ISAACS: Thank you, Judge.

21 (WHEREUPON, proceedings resumed in open court as
22 follows:)

23 THE COURT: Go ahead, Mr. Wise, call your next
24 witness.

25 MR. WISE: If it please the Court, the State would

1 next call Mr. Larry Bowles.

2 THE COURT: Raise your right hand. Do you swear
3 to tell the truth, the whole truth and nothing but the truth,
4 so help you God?

5 THE WITNESS: I do.

6 LARRY BOWLES,

7 called as a witness on behalf of the State, having been
8 first duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. FALLIS:

11 Q State your name for the Court, please, sir?

12 A Larry Bowles.

13 Q And your business, profession or occupation, Mr.
14 Bowles?

15 A I'm an Agent with the Oklahoma State Bureau of
16 Investigation.

17 Q How long have you been so engaged?

18 A Four years, nine months.

19 Q Mr. Bowles, have you had an occasion in your career
20 with the Oklahoma State Bureau of Investigation to ever meet
21 a person by the name of Gene Leroy Hart?

22 A Yes, sir, I have.

23 Q Do you recognize that person in the courtroom
24 today?

25 A Yes, sir, I do.

1 MR. ISAACS: We'll stipulate that he is sitting
2 here at counsel table.

3 Q Now Mr. Bowles, will you tell the Court when and
4 where you first saw that person?

5 A April 6, 1978.

6 Q And where was that, please?

7 A The residence of Sam Pigeon, Jr., in Cherokee
8 County.

9 Q Were there other people present besides yourself
10 and Gene Leroy Hart, the Defendant?

11 A Yes, sir.

12 MR. ISAACS: Judge, at this time, I object and I
13 move that any further testimony of this witness be taken
14 concerning our Motion to Dismiss this cause, for the reason
15 that Mr. Hart was arrested illegally without any legal foun-
16 dation for him being arrested.

17 THE COURT: Motion to Dismiss is overruled.
18 Exception noted.

19 MR. ISAACS: Thank you, Your Honor.

20 Q (By Mr. Fallis) I believe you stated there were
21 other people present?

22 A Yes, sir, there were.

23 Q Could you identify those people for His Honor,
24 please?

25 A There were seven other Agents of the OSBI.

1 Q Do you recall them by name?

2 A Yes, sir.

3 Q Who were they?

4 A John Sharp, Bud Owlsley, Carey Thurman, myself,
5 Mike Wilkerson, Jack Lay, Roger Chrisco, Harvey Pratt.

6 Q Mr. Bowles, in addition to yourself and the per-
7 sons you named and Gene Leroy Hart, was there any other
8 person present that you either knew or became acquainted
9 with?

10 A Yes, sir.

11 Q Who was that?

12 THE WITNESS: Your Honor, may I address the Court?

13 If I divulge this name, it could endanger someone's life.

14 THE COURT: Mr. Fallis asked you the question.

15 MR. FALLIS: I'll withdraw the question.

16 Q Now Agent Bowles, about what time was it that you
17 first saw this individual?

18 A 4:15 p. m.

19 Q And what was your purpose for being there at that
20 location near Mr. Pigeon's place?

21 A To arrest Gene Leroy Hart.

22 Q Did you make that arrest?

23 A Yes, sir, I did.

24 Q At the time you made the arrest, did you make any
25 observations concerning the manner or type of clothing worn

1 by the Defendant Gene Leroy Hart?

2 MR. ISAACS: I object, Your Honor, that the arrest
3 was illegal and anything seized as an incident to this was
4 illegal. It was illegally seized and move that it all be
5 suppressed.

6 THE COURT: Do you wish to make any comment, Mr.
7 Fallis?

8 MR. FALLIS: If it please the Court, we have of
9 course not made any attempt to introduce any items of evi-
10 dence. I'm aware that there's a motion pending before the
11 Court where, at the Court's pleasure insofar as any hearing
12 on that motion at this time, but certainly I don't think
13 anything has been introduced as such, Your Honor.

14 THE COURT: Do you remember the approximate date
15 that you filed your motion, Mr. Isaacs?

16 MR. ISAACS: Long time ago.

17 THE COURT: One of the first ones, wasn't it?

18 MR. WISE: We believe it was in the month of May,
19 Your Honor.

20 MR. HOBBS: Your Honor, it was filed April 21st.
21 I have a copy here.

22 THE COURT: Your question, Mr. Fallis, went to
23 what he observed at the time of the arrest?

24 MR. FALLIS: The manner of dress.

25 THE COURT: In the way of dress of the Defendant,

1 is that correct?

2 MR. FALLIS: Yes, sir.

3 MR. COURT: And you are moving that his observation
4 be suppressed on the grounds that it was an illegal arrest;
5 is that correct?

6 MR. ISAACS: His observation was made inside the
7 house in a place where he had no right to be because of the
8 way he got in that house.

9 THE COURT: Objection will be sustained until a
10 proper foundation is laid to show valid arrest.

11 Q (By Mr. Fallis) Where were you when you made
12 these observations, Agent Bowles?

13 A I was outside the residence of Sam Pigeon, Jr.

14 Q And where was the Defendant Gene Leroy Hart?

15 A He was outside the residence also.

16 Q Okay, and at the time you went to this location
17 for the purpose of making the arrest, were you aware of
18 warrants outstanding for Gene Leroy Hart?

19 A Yes, sir.

20 Q For what crime, sir?

21 A Felony Murder.

22 Q All right. Now, would you state to the Court what
23 observations you made in the way of any dress or clothing
24 worn by Gene Leroy Hart at that time?

25 A He was wearing brown shoes, socks, cut-off jeans,

1 tank top, eyeglasses.

2 Q Eyeglasses?

3 A Yes, sir.

4 Q All right. Agent Bowles, I hand you, sir, what
5 has been marked for purposes of identification as State's
6 Exhibit 82, a box containing a pair of eyeglasses. Would
7 you examine those, please?

8 A (Witness complies.)

9 Q Do you recognize the glasses in the box marked
10 State's Exhibit 82?

11 A Yes, sir, I do.

12 Q When and where did you first observe those?

13 A April 6th, 1978, on Gene Leroy Hart.

14 Q Was he wearing them at that time?

15 A Yes, sir, he was.

16 Q Would you take the eyeglasses from the box and
17 examine them insofar as their condition, please?

18 A (Witness complies.)

19 Q Can you tell the Court if they appear today to be
20 in the same condition as when you first observed them being
21 worn by Gene Leroy Hart?

22 A Yes, sir, they are.

23 Q I observe, Agent Bowles, that the eyeglasses are
24 bent upward, away from the actual connectors to the rim. Is

1 tank top, eyeglasses.

2 Q Eyeglasses?

3 A Yes, sir.

4 Q All right. Agent Bowles, I hand you, sir, what
5 has been marked for purposes of identification as State's
6 Exhibit 82, a box containing a pair of eyeglasses. Would
7 you examine those, please?

8 A (Witness complies.)

9 Q Do you recognize the glasses in the box marked
10 State's Exhibit 82?

11 A Yes, sir, I do.

12 Q When and where did you first observe those?

13 A April 6th, 1978, on Gene Leroy Hart.

14 Q Was he wearing them at that time?

15 A Yes, sir, he was.

16 Q Would you take the eyeglasses from the box and
17 examine them insofar as their condition, please?

18 A (Witness complies.)

19 Q Can you tell the Court if they appear today to be
20 in the same condition as when you first observed them being
21 worn by Gene Leroy Hart?

22 A Yes, sir, they are.

23 Q I observe, Agent Bowles, that the eyeglasses are
24 bent upward, away from the actual connectors to the rim. Is
25 that the same manner in which they were bent on that day?

1 A Yes, sir.

2 Q As they were being worn by Gene Leroy Hart?

3 A Yes, sir.

4 Q I observe also that there is tape affixed to the
5 eyeglasses. Can you tell the Court if that condition is the
6 same or different than when you observed them in court today
7 than when you observed them on Gene Leroy Hart?

8 A It is the same.

9 Q Agent Bowles, are those men or women's glasses?

10 A Women's.

11 Q How long were you there in the presence of Gene
12 Leroy Hart on that property?

13 A Approximately forty minutes.

14 Q And did you or any other person to your knowledge
15 transport him to any location?

16 A Yes, sir, I did.

17 Q Where did you take him?

18 A I took him to the OSBI Office in Tahlequah.

19 Q And at the time you made the transportation, had
20 there been any change in clothing that you had first observed
21 on the Defendant?

22 A No, sir.

23 MR. FALLIS: No other questions, Your Honor. We
24 would move for an introduction of State's Exhibit No. 72 at
25 this time -- 82, excuse me.

CROSS EXAMINATION

1
2 BY MR. ISAACS:

3 Q Mr. Bowles, could I see what you're reading up
4 there today?

5 A Sure can, sir. Do I get them back.

6 Q What?

7 A Do I get them back?

8 Q Well, maybe.

9 THE COURT: Mr. Isaacs, have you had a chance to
10 look at the offered Exhibit 82?

11 MR. ISAACS: I don't think we'll object to that.

12 THE COURT: 82 is received.

13 MR. ISAACS: Judge, could we have just a moment to
14 go over this?

15 Q (By Mr. Isaacs) You've got some nice little har-
16poons written down there, haven't you, Mr. Bowles?

17 MR. FALLIS: If it please the Court, I object to
18 the comments by counsel.

19 THE COURT: Sustained.

20 Q Mr. Bowles, did someone tell you to write that
21 there this morning?

22 A No, sir.

23 Q Did you make that up on your own volition?

24 A Yes.

25 Q Did you write that in blue ink?

1 A Blue and black, both.

2 Q Yeah, I noticed that. All the matters on the
3 front of those two documents are written in black ink. When
4 did you write that?

5 A Last night.

6 Q When did you write the blue ink?

7 A This morning.

8 Q And where were you when you wrote it?

9 A In the car.

10 Q Where was the car?

11 A On the street.

12 Q You wrote that so you'd be sure to say that; right?

13 A Be sure and remember it in case I was asked.

14 Q How many people were with you when you went up to
15 Sam Pigeon's to hunt Gene Leroy Hart?

16 A There was eight.

17 Q Is that including the man that told you where he
18 was?

19 A That's correct.

20 Q What is that man's name.

21 A (No response.)

22 MR. ISAACS: Judge, I'd ask you to order him to
23 answer the question.

24 MR. FALLIS: If it please the Court, we would
25 reflect to the Court that pursuant to rules heretofore

1 adopted by Courts in these matters, it is not material to
2 this case and would certainly jeopardize security and safety
3 of the individual.

4 MR. ISAACS: He's a witness to what happened, Judge,
5 and therefore, I think that even though they want to take
6 him as an informant, it's kind of like that old adage, "You
7 can call a cow's tail a leg. If somebody says he's got five
8 legs, it doesn't matter what you call it, it's still a tail"
9 and this guy's a witness and therefore we ought to be able
10 to ask him what the name of that fellow is so we can bring
11 him here and let him testify about what happened.

12 THE COURT: Objection is sustained.

13 Q Mr. Bowles, what time of day was it when you went
14 to Mr. Pigeon's home up there in Tahlequah?

15 A 4:15 p. m.

16 Q You had eight guys with you?

17 A That's correct.

18 Q How did you come up on the Pigeon home without
19 alerting anybody that you were going?

20 A Element of surprise.

21 Q Kind of sneaked up on them?

22 A Element of surprise.

23 Q So you went there very quietly, didn't you?

24 A Well, I don't know how quiet you can be with three
25 cars.

1 Q What was Mr. Hart doing when you saw him the
2 first time?

3 A Laying on the ground on his stomach with handcuffs
4 behind him.

5 Q And that's the first time you saw him?

6 A That's correct.

7 Q So all this testimony you gave us on direct evi-
8 dence was something that somebody told you about; you didn't
9 see it yourself, did you?

10 MR. FALLIS: If it please the Court, I'll object
11 to the question, assuming facts not in evidence. He testi-
12 fied to his observations.

13 THE COURT: Well, overruled. I think it is a
14 proper question. You can answer.

15 Q The first time you saw Mr. Hart is when he was
16 laying on the ground, handcuffed; right?

17 A That is correct.

18 Q Now you testified on direct you saw him outside
19 the house walking around?

20 A I testified I saw him outside the house.

21 Q When did you see him outside the house?

22 A Approximately 4:15 p. m.

23 Q Who brought him out of the house?

24 A Another agent.

25 Q What is his name?

1 A Jack Lay.

2 MR. ISAACS: Judge, at this time I move that all
3 his testimony be stricken for the reason that his testimony
4 as a basis for the arrest which gives rise to the Court
5 having jurisdiction of the cause is not one which the
6 witness has received himself and therefore, his testimony
7 should be suppressed.

8 THE COURT: Motion is denied.

9 Q Mr. Bowles, you said the first time you saw Mr.
10 Hart, he was flat on the ground handcuffed; is that correct?

11 A That's correct.

12 Q He's up over a stump too, right?

13 A No, sir, that's not correct.

14 Q Who else was there with you and Mr. Hart when he
15 was on the ground?

16 A Seven other agents.

17 Q And were you guys dressed in uniform at that time?

18 A No, sir, we don't have uniforms.

19 Q Well, you've got those blue overalls?

20 A Coveralls.

21 Q Coveralls. Were you wearing those?

22 A No, sir.

23 Q Wearing blue jeans?

24 A Yes, sir.

25 Q You went back to the truck and changed clothes then,

1 didn't you?

2 A Later on.

3 Q How much later?

4 A Several hours or -- pardon me, two hours.

5 Q How long were you up there at Mr. Pigeon's house
6 with Gene Hart before you took him to Tahlequah?

7 A Approximately five minutes.

8 Q While he was laying there on the ground, isn't it
9 true somebody kept saying, "What's your name?"

10 A No, sir, that's not true.

11 Q Were you there with him on the ground the whole
12 time?

13 A I was there with him.

14 Q Were you there all the time that Mr. Hart was on
15 the ground?

16 A From the time I first saw him, I was with him.

17 Q From the time you first saw him, did Mr. Hart
18 ever have his face upward until the agents had changed clothes?

19 A I don't understand your question.

20 Q It's a bad question. Mr. Hart is down on the ground
21 and he's over a stump, isn't he?

22 A No, sir.

23 Q He's not on the ground?

24 A Yes, sir.

25 Q Now, from the time that you put Mr. Hart down on

1 his stomach, down on the ground, handcuffed, from that time
2 until the time that you changed clothes, did Mr. Hart ever
3 get up and walk around?

4 A Yes, sir.

5 Q When did he get up and walk around?

6 A Immediately after I saw him on the ground.

7 Q How many minutes?

8 A Probably thirty seconds.

9 Q Did you ever have your knee in the middle of his
10 back?

11 A No, sir.

12 Q Ever have a gun pointed at his head telling him,
13 "If you move, I'll kill you"?

14 A No, sir.

15 Q You didn't?

16 A No, sir.

17 Q And nobody in your presence ever asked him what
18 his name was?

19 A I knew who it was.

20 Q I didn't ask you that. I asked you if somebody
21 in your presence asked him what his name was?

22 A I've already testified I heard no one ask him what
23 his name was.

24 Q Which county did all this take place in?

25 A Cherokee.

1 Q Have you ever been up there to Mr. Pigeon's house
2 before?

3 A No, sir.

4 Q After Mr. Hart got up off the ground, isn't it
5 true that somebody went to the vehicle and got a camera?

6 A That's right.

7 Q And that they took pictures of Mr. Hart and his
8 capture?

9 A That is correct.

10 Q Do you have copies of those pictures?

11 A Yes, sir, I do.

12 Q And where are those pictures kept at this time?

13 A They are in my possession.

14 Q Anybody else have copies of them?

15 A Not to my knowledge. There's two pictures and I
16 have them.

17 Q Only two?

18 A To my knowledge.

19 Q Anybody else take any pictures out there that day?

20 A Yes, there was other pictures taken of the resi-
21 dence, of the area.

22 Q Who took them?

23 A Jack Lay took the pictures.

24 Q And where are those pictures?

25 A Jack Lay's possession, I assume.

1 Q Were they taken in his capacity as an OSBI Agent?

2 A Yes, sir.

3 Q Were your pictures taken in your capacity as an
4 OSBI Agent?

5 A Yes, sir.

6 Q Let me ask you about this pair of glasses Mr.
7 Hart was wearing. What kind of tape was round the eyepiece
8 there holding it to the frame?

9 A Black, electrician-type tape. That's known as
10 electrician's tape, shiny.

11 Q What property did Mr. Hart have on his person
12 that day, other than the boots. You talked about those
13 shoes, pair of cut-off jeans and a tank top?

14 A Socks and eyeglasses.

15 Q Mr. Hart had been lifting weights when you fellows
16 came up on him, hadn't he?

17 A I have no idea.

18 Q Did you see him lifting weights when you drove up
19 there?

20 A No, sir.

21 Q Did you see him go shut the back door?

22 A I saw him open the back door, look at us and shut
23 it.

24 Q And then, did someone go into the house with a
25 shotgun?

1 A Yes, sir.

2 Q And who was that?

3 A Jack Lay.

4 Q And after Mr. Lay went into the house and got Mr.
5 Hart and brought him back out, what happened?

6 A I walked around the side of the residence and read
7 Mr. Hart his Rights.

8 Q Read them from a card?

9 A Yes, sir.

10 Q Read them all to him?

11 A Yes, sir.

12 Q Then what happened?

13 A He called me a sonofabitch.

14 Q He really did, huh?

15 A Yes, sir, he did.

16 Q What else happened? Let's hear all these harpoons.

17 MR. FALLIS: If it please the Court, we're going
18 to object to the statements of counsel. He may inquire of
19 the witness but certainly not make the kind of comments he's
20 making.

21 THE COURT: Sustained.

22 Q Go ahead and read them, Mr. Bowles.

23 A He said, "You'll never pin it on me. You can get
24 me for escape, but you'll never pin that on me." And I said,
25 "What?" And he said, "Killing those three little girls."

1 Q What else did Mr. Hart say to you?

2 A That's all he said.

3 Q What else did you say to him?

4 A "Get in the car."

5 Q Did you go in the house?

6 A I didn't, no.

7 Q Did anybody else go into the house?

8 A Yes.

9 Q Who went in the house?

10 A I don't remember; some of the other agents.

11 Q Have a search warrant?

12 A No, sir.

13 Q Did they collect any evidence at the house?

14 A They collected some evidence at the house, yes.

15 Q What evidence did they seize at the house?

16 A I don't know.

17 Q Do you know the names of the fellows that went
18 into the house and collected the evidence?

19 A Jack Lay, Dennis Reimer, Roger Chrisco.

20 Q Did Mr. Sam Pigeon give them permission to go in
21 there and collect those items?

22 A To my knowledge, he did.

23 Q Did Mr. Gene Hart give them permission to go in and
24 collect those items?

25 A I don't know.

1 Q Did they have a search warrant?

2 A No, sir.

3 Q After you and Mr. Hart got in the car, where did
4 you go?

5 A Tahlequah.

6 Q Who was with you?

7 A Mike Wilkerson and Bud Owlsley.

8 Q How long did it take you to get to Tahlequah?

9 A Approximately fifteen to twenty minutes.

10 Q Fifteen or twenty minutes? What route did you
11 take to get back to Tahlequah?

12 A State Highway 82.

13 Q When you got to the OSBI Office, what happened?

14 A Hart was positively identified by his thumbprint.

15 Q Who made that identification?

16 A Harvey Pratt.

17 Q And after Mr. Hart was positively identified by
18 thumbprint, what happened?

19 A We made arrangements to transport him to the
20 State Penitentiary at McAlester.

21 Q Did you make any phone calls to anybody after you
22 got to the OSBI Office?

23 A I didn't.

24 Q Did you make a phone call to Mr. Kennedy saying
25 Gene Hart had been captured, let all our people know first.

1 Let the Governor release it to the press and then call
2 Sheriff Weaver?

3 A I didn't make that comment.

4 Q Did anyone make that comment in your presence?

5 A No, sir.

6 Q Did you take some more pictures when you got back
7 to the office?

8 A Yes, sir, I did.

9 Q How many?

10 A Approximately four.

11 Q Who of?

12 A Gene Hart.

13 Q What was the purpose of taking those pictures?

14 MR. FALLIS: If it please the Court, at this
15 point, in order to save time, I'd object as being outside
16 the scope of direct examination. The only examination on
17 direct was at the scene at Mr. Pigeon's place where the
18 arrest occurred.

19 THE COURT: The objection is sustained.

20 Q Mr. Hart make any statements to you at the OSBI
21 Headquarters?

22 MR. FALLIS: If it please the Court, we would make
23 the same objection.

24 THE COURT: Objection is sustained.

25 Q Mr. Hart tell you that day that he wanted a lawyer

1 and wanted one right then?

2 A No, sir.

3 Q Oh, he didn't?

4 A No, sir.

5 Q Did he tell somebody else that in your presence?

6 A No, sir.

7 Q Did you talk to Mr. Wise before testifying -- ex-
8 cuse me -- Mr. Fallis, before testifying here today?

9 A I talked to everyone at the table before testify-
10 ing.

11 Q Did you go over your testimony here this morning?

12 A Yes, sir.

13 Q Discuss it?

14 A This is normal procedure.

15 Q Now, have you told me everything that you know
16 about what happened up there at Sam Pigeon's house on the
17 day that Mr. Hart was arrested?

18 A To the best of my memory, yes, sir.

19 Q Have you told me everything that happened between
20 Sam Pigeon's house and the OSBI Headquarters in Tahlequah?

21 A I responded to your questions honestly.

22 Q I didn't ask you that. I asked you if you've told
23 me everything that happened between the Sam Pigeon house and
24 OSBI Headquarters?

25 A Everything that you have asked me, I have answered.

1 Q Well, what haven't I asked you about that happened
2 pertaining to this case?

3 A I don't know what you're talking about.

4 Q Did Mr. Hart make any statements to you on the
5 trip from Mr. Pigeon's house to the OSBI Headquarters?

6 A No, sir.

7 Q Did he tell you during that trip that he wanted a
8 lawyer?

9 A No, sir.

10 Q Did he tell you at OSBI Headquarters that he
11 wanted a lawyer?

12 A No, sir.

13 Q Did he tell anybody in your presence?

14 A No, sir.

15 Q Mr. Bowles, when Mr. Hart was brought out of the
16 house, he was brought out handcuffed, was he not?

17 A I don't know how he was brought out. All I can
18 testify to is what I observed.

19 Q Who threw him down on the ground?

20 MR. FALLIS: If it please the Court, that's assum-
21 ing facts not in evidence.

22 MR. ISAACS: No, that's in evidence.

23 MR. FALLIS: No, Your Honor, that's not in evidence.

24 THE COURT: Objection is sustained. The testimony
25 was that he was on the ground not that he'd been thrown.

1 Q All right. How did he get down on the ground?

2 A He was on the ground when I walked around and saw
3 him. I don't know how he got on the ground.

4 Q You don't know if somebody threw him down on the
5 ground or not?

6 A No, I don't.

7 Q Go ahead and look at them.

8 A I don't know if he was thrown on the ground.

9 Q How many people went in the house belonging to Sam
10 Pigeon that day while you were up there?

11 A Three.

12 Q Who were they?

13 A I've already testified who they were.

14 Q Well, you told me Jack Lay went in there and he
15 brought Gene out in handcuffs. Now who else?

16 A Roger Chrisco and Dennis Reimer.

17 Q Now, that group that was with you up there, did
18 any of them take any evidence from the scene and transfer
19 it back to Tahlequah that day?

20 MR. FALLIS: If it please the Court, I believe this
21 area has been fully -- I object to it as being asked and an-
22 swered earlier.

23 THE COURT: Objection is overruled as to the por-
24 tion of the question concerning time of transfer. He has
25 testified that the evidence was taken so you may answer if

1 it was transferred that day or not.

2 A (By Mr. Bowles) I don't know to my knowledge.

3 Q Did you see items of evidence taken out of the
4 Pigeon's house that belonged to Mr. Hart?

5 A No, sir.

6 Q Who took a copy of Mr. Hart's thumbprint?

7 A Harvey Pratt.

8 Q Can you furnish us with a copy of that?

9 A I'm not sure.

10 Q Do you keep a record of those things?

11 A I don't have it myself.

12 Q Was Mr. Pratt in the normal course of business as
13 an OSBI Agent keep that for his records?

14 A You'll have to ask Mr. Pratt.

15 Q Well, you're an OSBI Agent too, aren't you?

16 A Yes, I am.

17 Q If you are going to identify somebody, you'd use
18 the same procedure Mr. Pratt does?

19 A No, sir, I do not.

20 Q Why is that?

21 A I'm not a Fingerprint Technician.

22 Q All right, if you were a Fingerprint Technician,
23 would you keep a record in your file of Mr. Hart's thumbprint,
24 if you are going to identify him to that thumbprint?

25 MR. FALLIS: Judge, if he was a priest, he might

1 have a church but that has nothing to do with this case. He
2 has already stated he doesn't work in that area.

3 THE COURT: Sustained.

4 MR. ISAACS: Can't beat the Holy Ghost, Judge.
5 We'll let him go for now and ask that he be on 24-hour
6 notice. Is that all right, Mr. Bowles?

7 A (By Mr. Bowles) I'm looking forward to it.

8 MR. ISAACS: We'll see you then.

9 THE COURT: We will be in recess until 1:15.

10 AFTERNOON SESSION

11 (Following the lunch recess, the proceedings
12 continued as follows:)

13 THE COURT: I believe we're ready for your next
14 witness.

15 MR. WISE: If it please the Court, the State would
16 next call Miss Janice Davis.

17 THE COURT: Raise your right hand. Do you swear
18 to tell the truth, the whole truth and nothing but the truth,
19 so help you God?

20 THE WITNESS: Yes, sir, I do.

21 JANICE DAVIS,

22 called as a witness on behalf of the State, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. WISE:

1 Q Miss Davis, would you state your name for the
2 Court?

3 A Janice M. Davis.

4 Q What's your occupation?

5 A I'm a Forensic Chemist for the Oklahoma State
6 Bureau of Investigation.

7 Q How long have you been employed by the OSBI, Miss
8 Davis?

9 A Approximately three years.

10 Q What's your occupation and background for the job
11 - the occupation that you possess?

12 A I attended Central State University; I attained
13 a Bachelor of Science Degree in Chemistry, a minor in
14 Physics and a minor in Biology.

15 Q Now Miss Davis, what specialized training in
16 addition to that have you had in the way of the scientific
17 field since you've joined the OSBI?

18 A After being employed by the Oklahoma State Bureau
19 of Investigation, I received six months on-the-job training.
20 During that time, I was under the supervision of the Chief
21 Chemist. After that time, I became a working, full time
22 forensic chemist.

23 Q What's the nature of your work?

24 A I received other training also from the Bureau.

25 Q From the OSBI or the FBI?

1 A Yes, sir, I have; OSBI.

2 MR. ISAACS: I object to as not responsive.

3 THE COURT: Sustained.

4 Q What's the nature of your work?

5 A The nature of my work is to analyze substances
6 brought into the OSBI by law enforcement agencies, dealing
7 with criminal matters rather than civil matters.

8 Q Now Miss Davis, did you have the responsibility
9 or the obligation, along with another member of the OSBI,
10 to present at the Grand Valley Hospital for the taking of
11 certain samples from the Defendant Gene Leroy Hart?

12 A Yes, sir, I did.

13 Q On what date did that take place?

14 A April 18, 1978.

15 Q Would you tell us, was that done under the direc-
16 tion of a medical practitioner?

17 A Yes, sir.

18 Q And who all was present please?

19 A I can't recall all the names that was in the
20 room specifically. There were several people within the
21 room.

22 Q What about OSBI Agents associated with you, please?

23 A Myself was in the room, another chemist - OSBI
24 Chemist Dennis Reimer was in the room, the doctor from Grand
25 Valley Hospital.

1 Q And the Defendant, I presume?

2 A Yes, sir. Gene Leroy Hart was in the room and
3 his attorney.

4 Q All right. Now, at that time, what was taken in
5 the way of samples from the Defendant?

6 A Samples of all parts of the hair, all over the
7 body were taken; a blood sample.

8 MR. ISAACS: I object to that, Your Honor, she
9 wasn't present when all of the samples were taken.

10 MR. WISE: If it please the Court, it's not in
11 evidence.

12 THE COURT: Well, she can only testify as to her
13 own knowledge. I don't understand the nature of your objec-
14 tion exactly.

15 MR. WISE: I don't either.

16 THE COURT: But if she's testifying from her own
17 knowledge, she may continue.

18 MR. ISAACS: It's argumentative.

19 Q And what else, please -- you were answering my
20 question?

21 A Hair samples were obtained, a blood sample - two
22 blood samples - and a saliva sample.

23 Q All right. Would you tell us, please, what was
24 done with the hair sample that was taken that day?

25 A The hair samples - all the samples that were taken

1 were transported to Oklahoma City OSBI Headquarters by
2 myself.

3 Q I now hand you what has been marked for identifi-
4 cation purposes only as State's Exhibit 83. Would you
5 examine that and tell us if you can positively identify
6 that, Miss Davis?

7 A This is an Oklahoma State Bureau of Investigation
8 evidence envelope. I can identify it by my initials on it
9 and the date my initials were placed on it.

10 Q Which date, please?

11 A April 18, 1978.

12 Q All right, and is this the envelope which you
13 testified to that you transported?

14 A Yes, sir, it is.

15 Q From where to where, please?

16 A I transported this from Pryor, Oklahoma to Okla-
17 homa City OSBI.

18 Q On that same date?

19 A Yes, sir.

20 Q All right.

21 A I did receive -- I did not get to Oklahoma City
22 until right about midnight.

23 Q And when you got there, where were they placed?

24 A They were placed in the laboratory.

25 Q I now hand you what has been marked for identifica-

1 tion purposes as State's Exhibit 84. Would you tell me,
2 Miss Davis - first of all, can you positively identify that?

3 A Yes, sir, I can. It has my handwriting.

4 Q And what, if you will, what is that?

5 A This is a saliva sample taken from Gene Leroy Hart
6 at Grand Valley Hospital in Pryor, Oklahoma, taken by myself,
7 Janice M. Davis, Forensic Chemist, OSBI, in the presence of
8 Dennis Reimer, Forensic Chemist, OSBI; Dr. Richard Martin,
9 Chief of Staff at Grand Valley Hospital. I signed it and
10 dated it April 18, 1978.

11 Q All right. Is that a part of the parcel you
12 just testified that you took to Oklahoma City?

13 A Yes, sir, it is.

14 Q All right. Now, following that date, April 18th,
15 1978, at Oklahoma City, did you conduct any tests on what you
16 hold in your hand and has been marked as State's Exhibit 84?

17 A Yes, sir, I did.

18 Q And when did you conduct those tests?

19 A The specific date, I cannot recall.

20 Q All right. What tests did you run on it, please?

21 A I performed a secretor analysis on the dried saliva
22 sample.

23 Q All right, and do you have the results of that
24 test?

25 A Yes, sir, I do.

1 Q What were the results of that test, please?

2 A The results of my test were conclusion of the
3 fact that, from that saliva sample from Gene Leroy Hart, he
4 is, in fact, a secretor of blood group substance "O".

5 Q And from the time that you received this sample
6 from Mr. Hart at Grand Valley Hospital until you took it to
7 Oklahoma City and until you conducted the tests you testi-
8 fied to, has this always been in your custody or control or
9 that of the Agency of the Oklahoma State Bureau of Investi-
10 gation?

11 A Yes, sir, it has.

12 Q And you brought it to this hearing at my request;
13 is this correct?

14 A Yes, sir.

15 MR. WISE: If it please the Court, the State would
16 therefore ask that State's Exhibit 84 be introduced into
17 evidence.

18 MR. ISAACS: No objection.

19 THE COURT: No. 84 is received.

20 MR. WISE: If it please the Court, I believe the
21 chain is now complete on State's Exhibit 83, and we would
22 therefore likewise move that State's Exhibit 83 be introduced
23 into evidence.

24 THE COURT: That was the envelope that 84 was --

25 MR. WISE: The envelope containing all the hair

1 samples, et cetera, that was just testified to, Your Honor,
2 taken at Grand Valley Hospital on April 18, 1978.

3 THE COURT: Just the envelope?

4 MR. WISE: It contains --

5 MR. ISAACS: Judge, I object to the pubic hair
6 part of it. She didn't take the pubic hairs and therefore,
7 I object.

8 MR. WISE: If it please the Court, to overcome Mr.
9 Isaacs' objection, we previously had a witness by the name
10 of Mr. Dennis Reimer, who was also an OSBI Agent, who testi-
11 fied he was present and during his direct examination, by my
12 memory, and certainly I do not challenge the Court's record,
13 we contend that Mr. Reimer testified, I believe, that he was
14 present along with this particular witness and that these
15 samples were forwarded after both of them had observed them
16 taken, or what Mr. Isaacs seems to know about a specific
17 situation.

18 THE COURT: Mr. Wise, my recollection isn't the
19 same as yours according to Mr. Reimer's testimony.

20 MR. WISE: Very well, Your Honor, I believe this
21 witness has testified that she was present when the samples
22 were taken. May I ask her a qualifying question?

23 THE COURT: You may go ahead with your foundation,
24 if you wish.

25 Q (By Mr. Wise) Miss Davis, apparently out of modesty,

1 counsel said that you were not present when the pubic hairs
2 were removed; is that a true statement?

3 A When the pubic hairs were taken, I exited the room.

4 Q Other than that, did you witness all of the removal
5 of the hair?

6 A I witnessed all the other hair.

7 MR. WISE: If it please the Court, we will withdraw
8 that envelope containing those specific hairs and re-submit
9 State's Exhibit 83.

10 THE COURT: Any objection with that, Mr. Isaacs?

11 MR. ISAACS: None at all, and if Mr. Wise would
12 let me see the envelope, we might be able to stipulate. We
13 will go ahead and withdraw our objection at this time and
14 allow that also to come into evidence.

15 THE COURT: Very well. State's Exhibit 83, which
16 I understand, Mr. Wise, is the envelope containing all of the
17 samples, except for the saliva samples taken from Gene Leroy
18 Hart on 4-18-78?

19 MR. WISE: All the hair samples.

20 THE COURT: Yes, not the blood?

21 MR. WISE: Not the blood.

22 THE COURT: This is only the hair samples, then?

23 MR. WISE: Yes.

24 THE COURT: State's Exhibit 83 is received.

25 MR. WISE: We have no further questions, Your Honor.

1 MR. ISAACS: Judge, could I have a short recess
2 to formulate a couple of questions about secretors?

3 THE COURT: I think we can take about a five minute
4 recess.

5 (Following a five minute recess, the proceedings
6 continued as follows:)

7 THE COURT: Go ahead, Mr. Isaacs.

8 CROSS EXAMINATION

9 BY MR. ISAACS:

10 Q Miss Davis, can you tell me what it was you ran
11 on the saliva sample to determine whether Gene Hart is a
12 secretor?

13 A Yes, sir, I ran absorption inhibition tests.

14 Q What do you do?

15 A When you run that test, you run a series of reac-
16 tions. From those reactions, you are able to conclude if,
17 in fact, you have inhibitions in your conclusions. If you
18 do, then, you have, in fact, results concluding as to a
19 secretor substance.

20 Q Now, what portion of the population of this country
21 would fall within the class of what we call "secretors"?

22 A Approximately 80 percent of the people in the United
23 States are, in fact, secretors.

24 Q Some authorities estimate as high as 85 percent of
25 the population, do they not?

1 A I said approximately 80.

2 Q And some authorities approximate that figure higher,
3 though, don't they?

4 A Yes, sir.

5 Q Now, when you said that when Mr. Hart's sample
6 was grouped, his blood grouped "O"; is that correct?

7 A Yes, sir.

8 Q What percentage of the population would fall within
9 that group?

10 A Approximate population of the blood group "O" in
11 the United States is approximately 45 percent.

12 Q Could be a little higher; could be a little less,
13 couldn't it?

14 A Yes, sir.

15 Q Just depends on what books you read?

16 A That is right.

17 Q Would you tell me what text you consider authori-
18 tative for blood grouping?

19 A There are many texts that are authoritative on
20 blood grouping.

21 Q Can you give me the names of some of those books
22 and their authors?

23 A Specifically I can name several off the top of my
24 head.

25 Q Yes?

1 A One would be the FBI Manual.

2 Q Now, when we say the FBI Manual, do you mean this
3 FBI Handbook of Forensic Sciences, or are you talking about
4 that big one?

5 A I'm talking about the manual you obtain when you
6 go to Serology School at the FBI Academy.

7 Q What color of cover does that have on it?

8 A It does not have a cover.

9 Q Is it paperback?

10 A No, sir.

11 Q Is it a bound volume?

12 A No, sir, it is not. It is like a loose-leaf
13 notebook.

14 Q Now, what other books or volumes or periodicals
15 would you consider authoritative?

16 A Ortho Diagnostics has a book out on blood group-
17 ing substances, an ABO and Rh blood grouping factors. There
18 are many others.

19 Q Can you give me the name of some other books?

20 A In the forensic field or more so in the medical
21 field?

22 Q Either one.

23 A In the medical field, blood grouping is dealing
24 with liquid blood wherein the forensic field, you are usual-
25 ly dealing with dried blood. Therefore, there is quite a bit

1 of difference in the blood grouping tests performed.

2 Q Do you consider the Journal of Forensic Science
3 authoritative?

4 A Yes, sir, I do.

5 Q Do you read that periodical?

6 A Yes, sir, I do. I'm a member of the American
7 Academy of Forensic Sciences and receive that journal.

8 Q Any other journals that you consider authoritative?

9 A There's American of the Academy of Forensic Science
10 Society, which originates from England.

11 Q And you consider their publication authoritative
12 in the field of blood grouping tests?

13 A Yes, sir, I do.

14 Q Could I see those sheets you're reading from,
15 please?

16 A Yes, sir, you can. You are more than welcome.

17 Q Thank you.

18 A You're more than welcome. Would you like a copy?

19 Q Could I have a copy after we're through? It
20 would take a long time to write all that down..

21 When we say somebody is a secretor, does that
22 lead to other tests or comparisons which can be made, which
23 would conclusively identify a person by blood or saliva?

24 A Would you please repeat the question?

25 Q When we place a person in a category and we call

1 that category a secretor, is there any other tests that we
2 can use to positively identify that person by his blood or
3 saliva or any other body fluid?

4 A In other words, do I understand your question to
5 be --

6 Q You don't understand my question? You ask me about
7 it. I'll try to make it clearer. Can we say that a secretor
8 can be positively identified by his blood?

9 A Not to an individual, no, sir.

10 Q But we can exclude that person, can we not?

11 A Absolutely.

12 Q So we know that twenty percent of the population
13 of this country approximately, or fifteen percent, don't
14 have the elements in their blood which would put them in the
15 category of a secretor; is that correct?

16 A No, sir, it is not.

17 Q Why don't you explain to me the difference at this
18 time?

19 A Yes, sir. A secretor is a person who, in their
20 body fluids, other than their blood, secretes a blood group
21 substance that can be detected, that correlates with their
22 blood type. For example, your saliva, your seminal fluid
23 or vaginal fluid, will determine, if, in fact, you are a
24 secretor and would correlate with your blood group.

25 Q Would your tears have enough of that blood grouping

1 substance in them?

2 A I really don't know, sir.

3 Q Perspiration?

4 A Possibility if you did not have contamination.

5 We have not dealt with perspiration with the OSBI.

6 Q Have you ever dealt with tears?

7 A No, sir, I have not.

8 Q Now, by "contamination", what do you mean?

9 A When you're talking about sweat, in my opinion,
10 you would have some problems in running your tests.

11 Q Like deodorant?

12 A Yes, sir.

13 Q If we're going to run a test to positively identify
14 someone's blood, how do we do that?

15 A There's no such test that I know of that positive-
16 ly links one person to a specific stain.

17 Q If we're going to run a test to link a particular
18 person by his saliva, what test do we use to make a positive
19 identification?

20 A To my knowledge, there is no test to determine,
21 to correlate a person positively as to a saliva or a seminal
22 stain.

23 Q So we can't even take a stain, assuming it to be
24 a seminal fluid or a saliva stain or a blood stain and ever
25 positively identify anyone; can we?

1 A No, sir.

2 Q And what we have to do is to be sure that our
3 tests are accurate so we don't identify the wrong man; isn't
4 that right, Miss Davis?

5 A Yes, sir.

6 Q And all you're saying here today is that Mr. Hart
7 falls within that category of 80 percent of the people in
8 this room in that he is a secretor?

9 A Yes, sir, of blood group "O".

10 Q Of blood group "O", and 40 percent of the people
11 in this room probably have blood group "O"?

12 A No, sir, 45 percent.

13 Q Thank you. Now, let me ask you a couple of ques-
14 tions about the authorities in the field of seminal fluid.
15 Can you give me the names of any authoritative texts which
16 you rely upon concerning the identification of seminal fluids?

17 MR. WISE: If it please the Court, we would object
18 to this line of questioning as we did not touch upon seminal
19 fluid in our direct examination. It's outside the scope.
20 Saliva and hair was the only thing that we discussed in the
21 direct examination, Your Honor.

22 THE COURT: Sustained.

23 Q Can we determine if someone is a secretor through
24 seminal fluids?

25 A Yes, sir, that is a body fluid other than the blood

1 that I have previously discussed.

2 Q That's what I thought. I just wanted to be sure
3 it was in the record. Can we determine someone is a secre-
4 tor through analysis of urine?

5 A In my dealings with secretor tests and of my
6 readings of the literature, this is not a standard procedure
7 in the forensic field of determining secretor status from
8 urine.

9 Q Can we determine if someone is a secretor from
10 fecal material?

11 A No, sir.

12 Q Can we determine if someone is a secretor from
13 vomitus?

14 A It is of my knowledge that no test of authorized
15 in the field of forensic sciences where you can determine
16 the secretor status of fecal material and that of vomitus
17 material. I have not dealt with and are not familiar with.

18 Q Can we determine whether a person is a secretor
19 through perspiration?

20 MR. WISE: If it please the Court, that question
21 has been asked and answered.

22 MR. ISAACS: Well, we've talked around it.

23 THE COURT: I'll allow it. You may answer yes or
24 no.

25 A I know of no laboratory that are utilizing the

1 secretor tests from perspiration.

2 Q Can we determine whether a person is a secretor
3 from hair?

4 A No, sir.

5 Q From skin epidermis?

6 A No, sir, to my knowledge.

7 Q Are there any other body fluids or body tissues
8 which could be used to determine whether or not a person is
9 a secretor?

10 A As I have previously explained, a secretor is
11 those fluids that are analyzed other than the blood. There
12 are other body fluids in the body that are being worked with
13 in the forensic field to determine if, in fact, that person
14 is a secretor. I know of no other existing tests that are
15 performed that are utilized and accepted in the forensic
16 field at this time.

17 Q Are you familiar with a book by a fellow by the
18 name of Andre Moenssens, Scientific Evidence?

19 A Yes, sir, I am.

20 Q Do you consider that text authoritative?

21 A That textbook?

22 Q It's written for us lawyers because we can't under-
23 stand that stuff, isn't that right?

24 A This is true. I know of several errors that are in
25 the book, that have been misquoted in the courtroom that we

1 are aware of.

2 Q So you don't consider most of Mr. Moenssens' book
3 to be authoritative, do you?

4 A If you're speaking of the entire book in its en-
5 tirety, seeing how that I do know the FBI made it very well
6 aware of the fact when I attended the school at the FBI
7 Academy, that there were numerous errors in the book and to
8 be aware of it. I would be reluctant to consider it very
9 authoritative.

10 Q Have you read it?

11 A Yes, sir, I have.

12 Q Do you consider that chapter on blood grouping to
13 be authoritative?

14 A At this particular moment, I would have to refresh
15 my memory as to what you are specifically quoting or you
16 are referring to.

17 Q Would you read that portion of the book before
18 the next time I talk to you? I'm going to call you back
19 here as a witness later on.

20 A Yes, sir.

21 Q Would you read that before we discuss testimony
22 here in court?

23 A I would be glad to refresh my memory to any parti-
24 cular section of the book, if you will be glad to tell me
25 which section you are referring to.

1 Q Could you read pages 247 through 305?

2 A Mr. Isaacs, I'll be glad to read it if you'll
3 loan me your copy. My copy is at OSBI Headquarters in
4 Oklahoma City.

5 Q Mine is borrowed.

6 A I own a copy.

7 THE COURT: Redirect?

8 MR. WISE: No redirect, Your Honor. Thank you.

9 (WHEREUPON, the witness was excused and withdrew
10 from the hearing room.)

11 THE COURT: Call your next witness.

12 MR. WISE: Miss Ann Davis, Your Honor.

13 THE COURT: Would you raise your right hand. Do
14 you swear to tell the truth, the whole truth and nothing
15 but the truth, so help you God?

16 THE WITNESS: Yes, sir, I do.

17 ANN G. REED,

18 called as a witness on behalf of the State, having been
19 first duly sworn, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. FALLIS:

22 Q Would you state your name for the Court, please?

23 A Ann G. Reed.

24 Q What is your address, ma'am?

25 A Oklahoma City, Oklahoma.

1 Q Would you tell the Court the nature of your work,
2 business, profession or occupation?

3 A I am a forensic chemist.

4 Q And by whom are you employed, ma'am?

5 A The Oklahoma State Bureau of Investigation.

6 Q How long have you served in that capacity with the
7 State?

8 A About four and a half years.

9 Q Can you tell the Court your background insofar
10 as educational training to do the work that you do for the
11 Oklahoma State Bureau of Investigation?

12 A Yes, sir. I have a degree in chemistry from
13 Texas Women's University in Denton, Texas. I have attended
14 courses at Washburn University at Topeka, Kansas; Georgetown
15 University in Washington, D. C.; Central State University
16 in Edmond, Oklahoma and also courses in forensic serology
17 and microscopy of hair at the FBI Academy in Quantico.

18 Q Now, ma'am, in addition to your work and perfor-
19 mance and services with the OSBI, have you worked with any
20 other law enforcement agency in the capacity as a forensic
21 scientist, ma'am?

22 A Yes, I have.

23 Q Would you tell His Honor what that experience has
24 been?

25 A I was employed for about a year and a half with

1 the Kansas Bureau of Investigation as a forensic chemist.

2 Q Now, in this area, Miss Reed, have you ever had
3 an occasion to be accepted as an expert witness in a court of
4 law?

5 A Yes, sir, I have.

6 Q On more than one occasion?

7 A Yes, sir.

8 Q And in your work and responsibilities with the
9 OSBI, are you assigned to a particular area of work that you
10 perform?

11 A Yes, sir, I am.

12 Q Tell His Honor what that is, please?

13 A Most of my work deals in serology and trace
14 examinations, particularly in hair comparison.

15 Q The background, the training that you mentioned,
16 educational as well as the FBI in matters of that type, has
17 it prepared you for your work that you do in the area of
18 hair comparisons?

19 A Yes, sir, it has.

20 Q And in the course of your work, Miss Reed, can you
21 give us any idea of how many times or occasions you have had
22 to say examine, classify and to attempt to make comparisons
23 of hair?

24 A Oh, the cases are probably well in the hundreds
25 by now and each case may include from anywhere from ten to

1 twenty to more than that hairs.

2 Q So many times, ma'am?

3 A Yes, sir.

4 Q Would it be fair to say that's primarily what you
5 do on an hourly basis each day, throughout the day?

6 A Yes, sir, it is. There are other things but at
7 this time, hair comparisons do take most of my time.

8 MR. FALLIS: If it please the Court, we would offer
9 Miss Reed as a qualified expert in the area of hair compari-
10 sons.

11 THE COURT: Any objection?

12 MR. ISAACS: For the record.

13 THE COURT: Objection is overruled. She may testi-
14 fy as an expert in her field.

15 Q Miss Reed, I'll hand you, ma'am, what has been
16 heretofore marked an envelope bearing State's Exhibit 48,
17 and would you advise the Court if you have seen that envelope
18 before this date?

19 A Yes, sir, I have. It has my initials and the date
20 of my analysis on it.

21 Q Now is that envelope today, does it have any con-
22 tent?

23 A No, sir, it does not.

24 Q At the time you initially saw the envelope, did
25 it have any contents?

1 A Yes, sir, it did.

2 Q And did you do anything with the contents from
3 that envelope?

4 A Yes, sir, I did.

5 Q What did you do, ma'am?

6 A There was a sample of what appeared to be hairs
7 here and I removed them and mounted them on a slide and
8 examined them.

9 Q Now, for the purpose of the record, ma'am, when
10 you say "on a slide" do you mean like a 35 millimeter slide
11 that you can project on a wall or a different kind of slide?

12 A No, sir, it's a microscope slide. It's a glass
13 slide about two centimeters by six; something like that.

14 Q Okay, ma'am, for the purpose of the record, from
15 State's Exhibit 48, it says "Item: Hair, Milner hands tape."
16 Do you recognize that writing on there as being on there when
17 you obtained it?

18 A Yes, sir, it was.

19 Q Okay. Ma'am, with reference to State's Exhibit 45,
20 another envelope. Can you examine that, please and tell
21 the Court if you've seen it before this date?

22 A Yes, sir, I have. It has my initials and the date
23 that I began my analysis on it.

24 Q What date was that, please, ma'am?

25 A I began my analysis on July 5th, 1977.

1 Q And this particular envelope for the purpose of the
2 record, indicates Item --

3 THE COURT: Excuse me. Which exhibit number is
4 on that one?

5 MR. FALLIS: No. 45, Your Honor.

6 Q -- Item: A hair from p. j. top, the name Milner;
7 is that correct, ma'am?

8 A Yes, sir, it is.

9 Q Was that writing on there when you received the
10 envelope?

11 A Yes, sir, it was.

12 Q Was there any contents in that envelope that you
13 prepared in the same manner that you just mentioned concern-
14 ing the other item?

15 A Yes, sir, there was.

16 Q Ma'am, I hand you what's been marked for purposes
17 of identification State's Exhibit No. 85. Would you examine
18 that, please, and tell the Court if you have seen that before
19 this date?

20 A Yes, sir. Again, it has my initials on it and
21 the date I began my analysis.

22 Q Okay. And where did you see that item, ma'am?

23 A It was in the Bureau of Investigation Evidence
24 Area. It had been turned over to me by Dennis Reimer.

25 Q And finally, ma'am, I'll hand you what has been

1 marked for identification purposes and introduced, I believe
2 at this point, State's Exhibit 83. It's a large manilla
3 envelope with several other envelopes inside. Could you
4 tell His Honor if you recognize that exhibit, ma'am?

5 A Yes, sir, I do. Again, it has my initials and
6 the date that I began my examination of these items.

7 Q Okay. Now, you're making reference to an envelope
8 that's got several smaller envelopes inside?

9 A That's correct.

10 Q Envelopes, as an example, "Left rear scalp hair
11 taken from Gene Leroy Hart; Right rear scalp hair taken
12 from Gene Leroy Hart" and on through? Do you recognize
13 those items, ma'am?

14 A Yes, sir, again, they have my initials and the
15 date I began my analysis of them.

16 Q And these items, ma'am, these individual envelopes
17 were in the apparently larger envelope. Did they have
18 contents at the time you first observed them?

19 A Yes, sir, most of them or some of them did. Some
20 of them were empty.

21 Q All right.

22 A But most of them did have something in them.

23 Q And those that had contents, did you do anything
24 with them in the way of preparation?

25 A Yes, sir, I did.

1 Q How did you prepare those?

2 A Again, I measured them and mounted them on the
3 same microscope slide that I previously mentioned.

4 Q Okay. Now, ma'am, the slides that you prepared for
5 your work, are they maintained by you?

6 A They are.

7 Q And in addition to the slides that you prepared
8 for your work, did you use any other type of equipment
9 in performing your duties and responsibilities?

10 A Yes, sir, I do.

11 Q Would you describe for His Honor what type of
12 equipment you use?

13 A Well, the first thing that I use is a ruler. I
14 measure the hair. And the second thing is a comparison
15 microscope. This is two microscopes that are joined togeth-
16 er so that you can view what is on the viewing stage of
17 both microscopes at the same time. They are separated only
18 by a hairline.

19 Q All right. Now, ma'am, the State's Exhibit 83
20 that's been introduced here with some indication of known
21 hair from Defendant Gene Leroy Hart?

22 A Yes, sir.

23 Q Did you, at any time, after receiving those to make
24 any type of a classification of those hairs?

25 A Yes, sir, I did.

1 Q Now is that a correct term to use in your business,
2 "classification of hair"?

3 A Well, we view them microscopically and try to
4 determine race, basic characteristics.

5 MR. ISAACS: Judge, we'll stipulate that the hair
6 that was taken from Gene Leroy Hart was Indian, and in her
7 business they call it mongoloid hair.

8 MR. FALLIS: If it please the Court, we are not
9 willing to accept that stipulation at this time.

10 THE COURT: Very well, that's all right. Continue.

11 Q Ma'am, did you make classifications concerning
12 those known hairs?

13 A Yes, sir, I did.

14 Q And first of all, can you tell us the nature or
15 how do you classify hairs, the known hairs from Gene Leroy
16 Hart?

17 A Well, visibly, they appear to be very dark hair.
18 I then measured them, mounted them on slides and viewed
19 them microscopically.

20 Q Did you make further classification then?

21 A That's right, to determine the race, if possible.

22 Q Now, were you able to make any classification in
23 reference to race when you viewed them through the microscope
24 that you had reference to?

25 A Yes, sir, I was.

1 Q Would you tell His Honor what that classification
2 was, please?

3 A They were basically Mongoloid-type hairs. How-
4 ever, there are some Caucasian characteristics present also.
5 In other words, they are of a mixed racial type of hair
6 with more Mongoloid characteristics than Caucasian.

7 Q Now, ma'am, the items that appear in State's Exhi-
8 bit No. 45, hair from the pajama top, Milner - did you attempt
9 to make any classification of those hairs?

10 A Yes, sir, I did.

11 Q All right, and can you tell the Court what type
12 of classification you made on that particular item?

13 A There were a number of hairs contained in here.
14 One of the hairs which was not consistent with most of the
15 hairs from the scalp of Milner was dark, and it did show
16 basically Mongoloid characteristics with some Caucasian
17 characteristics.

18 Q All right. Miss Reed, in reference to State's
19 Exhibit No. 48, items from the tape on hands of Milner - did
20 you make classification of hair or hairs that you found
21 there?

22 A Yes, sir, I did.

23 Q And can you tell the Court what classification you
24 made, please?

25 A The three hairs or three pieces of hair were dark,

1 they were of a mixed characteristic, basically Mongoloid
2 but with some Caucasian characteristics.

3 Q Finally, Miss Reed, concerning what you have iden-
4 tified as State's Exhibit 85, it seems to have quite a bit
5 of various materials in there. Did you find anything within
6 that packet in the way of hair which you identified as
7 being hair?

8 A Yes, sir, I did.

9 Q And I take it you must have made some preparation
10 of the hairs that you found?

11 A Yes, sir, I did.

12 Q And within that particular exhibit and the hairs
13 that you took from it, did you find any hairs that had the
14 same type of classification points that you have just mention-
15 ed?

16 A Yes, sir, I did.

17 Q Do you have any idea of how many, please, ma'am?

18 A Yes, sir. There were four pieces of hair in here
19 that were dark and were of basically Mongoloid characteristic
20 with a slight few Caucasian characteristics.

21 THE COURT: And what exhibit number is on that?

22 MR. FALLIS: 85, Your Honor.

23 THE COURT: All right.

24 MR. ISAACS: What item is that?

25 MR. FALLIS: I'm sorry.

1 MR. ISAACS: What item is that?

2 MR. FALLIS: No. 85 - State's Exhibit No. 85. It's
3 the item indicating sweepings from tent floor.

4 Q Now Miss Reed, in your work experience and train-
5 ing as a person in the field of forensic science, specializ-
6 ing in hair comparison, is there a significance to you
7 concerning, as an example, mixed racial characteristics in
8 a hair?

9 A Mixed characteristics are prevalent. You find
10 them frequently nowadays because very few people are pure
11 anything anymore. However, the way that these mixtures
12 occur will vary greatly.

13 Q From person to person?

14 A That's correct.

15 Q Does that have significance to you, ma'am?

16 A Yes, sir, it does. It helps to individualize the
17 hairs to some extent.

18 Q Now, in the known exemplars of hair from Gene Leroy
19 Hart, the racial mixture of Mongoloid-type hair compared to,
20 I think you said Caucasian?

21 A Yes.

22 Q Did you find that to be consistent throughout the
23 exemplars you examined?

24 A To some extent. He had some hairs which did show
25 more Caucasian characteristics than others but there were

1 mixtures of these characteristics in the known hair samples.

2 Q And were they consistent in that mixture in some
3 areas?

4 A Yes, sir, to some extent.

5 Q And in the area of State's Exhibit 48, the hair
6 from the Milner hand tape and the hair from the pajama top.
7 Did you find consistency in the ratio of mixtures there
8 between Mongoloid and Caucasian-type hair?

9 A Again, some of the hairs, of course, showed much
10 stronger Mongoloid characteristics and some were slightly
11 more Caucasian but we did cover a range. There was a consis-
12 tency there.

13 Q And ma'am, with reference to State's Exhibit No.
14 85, I think you stated you found these three hairs there
15 that you made classification on; is that correct?

16 A Yes, sir.

17 Q And did you find the same mixture of Mongoloid and
18 Caucasian there?

19 A Yes, sir.

20 Q Many times when people use the expression "Mongoloid"
21 --

22 MR. ISAACS: Object. Leading question.

23 THE COURT: He hasn't asked the question yet. You
24 may object after he asks it. What's your question, Mr.
25 Fallis?

1 Q Many times when people use the term or expression
2 "Mongoloid", they think of Asia; is that correct or true
3 in your line of work?

4 A No, sir. It means -- when we refer to hair as
5 Mongoloid or to a race as Mongoloid, we are referring to
6 the Oriental, the Eskimo and the American Indian.

7 Q Now, Miss Reed, based upon your training, your
8 experience, based upon the examinations that you made con-
9 cerning the known hair from Gene Leroy Hart and the sample
10 hairs taken from the pajama top, taken from the sweepings
11 from the floor and taken from the binding -- or at least
12 between the tape on the bindings of the little Milner girl's
13 hand, did you form an opinion concerning the comparison
14 between Gene Leroy Hart's hair and that hair?

15 A Yes, sir, I did.

16 Q Can you state for His Honor what your opinion is?

17 A The hairs were consistent in all microscopic
18 characteristics and have even the same source or a source
19 with exactly the same microscopic characteristics to their
20 hair.

21 MR. FALLIS: Thank you, ma'am. No other questions.

22 CROSS EXAMINATION

23 BY MR. ISAACS:

24 Q Miss Reed, you're not telling us that these hairs
25 that came from the tape and the floor came from Gene Leroy

1 Hart, are you?

2 A I cannot identify a person by a hair comparison.
3 However, these hairs came from Mr. Hart or someone with
4 exactly the same microscopic characteristics to their hair
5 that Mr. Hart has.

6 Q And in your opinion, you base that on hairs that
7 came from Mr. Hart and hairs that came from the scene of
8 the homicide; is that correct?

9 A That's correct, sir.

10 Q You are not saying here in court Mr. Hart was
11 the man who committed those homicides, are you?

12 A There's no way I can say that, sir.

13 Q All you're saying is that a person with hair simi-
14 lar to his was involved in the commission of this?

15 A It would have to be more than similar. They would
16 have to be consistent in all microscopic characteristics
17 but, yes, sir, that is all I can say.

18 Q Miss Read, in your technical report lab number --
19 there's a stack of them here --

20 A Yes, sir, there is.

21 Q S-77-332?

22 A Yes.

23 Q Directing your attention to page number 4 in your
24 technical report, your language was -- have you found that?

25 A No, I'm still looking. May I see it, maybe I could

1 find it better. Can I use yours?

2 Q Yeah, let me look on it with you.

3 A Okay.

4 Q Miss Reed, you said there that those hairs could
5 have the same source?

6 A That's correct.

7 Q You said that about all the hairs that you analyzed
8 that were Mongoloid?

9 A Basically, yes.

10 Q And characteristics similar to Mr. Hart?

11 A Consistent in microscopic characteristics, yes,
12 sir.

13 Q All right. How many Indians are there in Mayes
14 County?

15 A I have no idea, sir.

16 Q How many Indians in the State of Oklahoma?

17 A I'm sure there's a large number. I have no idea.

18 Q Anybody submit any Caucasian hairs to you for
19 microscopic examination?

20 A Yes, they did.

21 Q Were there Caucasian hairs that came from the floor
22 of the tent?

23 A Yes, sir.

24 Q And were there Caucasian hairs that came from the
25 bodies of the little girls?

1 A Yes, sir.

2 Q Were there Caucasian hairs that came from the
3 tape around the little girls?

4 A There was one hair that could be Caucasian.

5 Q Okay.

6 A It wasn't a clear-cut one.

7 Q Were there other hairs of a Caucasian nature?

8 A Yes, sir.

9 Q Did you compare those hairs with any other source?

10 A A known source, you mean?

11 Q Yes, ma'am.

12 A Yes, sir, I did some of them.

13 Q You compared them with the little girls, didn't
14 you?

15 A Yes, sir.

16 Q And the little girl with blonde hair compared
17 favorably with some of the hair that was found, did it not?

18 A That's correct.

19 Q We're not saying that that hair came from her
20 either, are we?

21 A All I can say is that it came from her or someone
22 with the same microscopic characteristics to their hair.

23 Q Did you compare that with any other source other
24 than the little girls?

25 A There were some other Caucasian hairs submitted and

1 I compared them with some of them but once the hair compared
2 to one of the little girls, it was no longer examined because
3 it had --

4 Q How many Caucasian samples of hair were submitted
5 to you for comparison?

6 A There were a large number. The families of the
7 children involved - we still have those samples and I believe
8 there was suspects whose hair were submitted to us but again,
9 some of these were not compared, simply because there were
10 so many hairs.

11 Q Can you give me an approximation as to the number
12 of hairs that were not compared?

13 A Of known hairs? I believe we could tell on my --
14 on the list of evidence.

15 Q All right. Do you want to go through that with
16 me?

17 A I have it.

18 Q Let me find out where you are and we'll go together.

19 A Just the whole list; okay. Here's some.

20 Q Starting out on page four?

21 A Right. Your one -- one, three --

22 Q Wait a moment. You've lost me.

23 A Sorry. It's just the long list of evidence. Well,
24 there was some hair. Shall I just read them off?

25 Q Well, --

1 A This was just a list of all the evidence submitted.
2 Here you go.

3 Q Okay.

4 A Head hairs from Carla Wilhite.

5 Q Yes, ma'am, and were those compared?

6 A No, sir, they were not. I have retained them at
7 this time.

8 Q Were there head hairs from Dee Elder?

9 A No, sir, again, they are being held and also from
10 Barbara Day.

11 Q So no comparisons were made on those samples?

12 A No.

13 Q Any particular reason for that?

14 A Most of the Caucasian hairs were identified as
15 being from the little girls. The others are pieces or parts
16 of hair which are really not good for comparison, hair
17 sprayed badly.

18 Q Well --

19 A There are some -- there are a number of hairs, I
20 think, I examined some 175 unknown hairs in this case and
21 I am sure there are a number of hairs that were never exam-
22 ined. They are being retained at this time. They are still
23 being held.

24 Q We can't -- you're not telling the Court the hair
25 that you compared to the little girls was absolutely their

1 hair, are you?

2 A No, sir. As I said before, you can't identify a
3 person from a hair sample. However, once a hair compares
4 in all microscopic characteristics to a person's hair, unless
5 there is a strong reason to believe that two people might
6 have hairs that could not be distinguished, that's as far
7 as it is taken.

8 Q But we want to be exact when we make a scientific
9 observation and give an expert opinion, don't we?

10 A Well, this is why we say that it would be someone --
11 the person whose known sample we're referring to or someone
12 with exactly the same microscopic characteristics to their
13 hair.

14 Q If we don't make the comparison, we don't know
15 that there is somebody with the same microscopic characteris-
16 tics, do we?

17 A Well, in order to rule that out, we would have to
18 go through the entire population of the earth.

19 Q I don't think you understood my question.

20 A Yeah, maybe I didn't.

21 Q If we're going to say that the hair that we have
22 microscopically compared with hair submitted from the crime
23 scene, we have to examine them, don't we, before we make any
24 assumptions?

25 A When known hairs are submitted, they're taken from

1 everyone who might have come in contact with the crime
2 scene.

3 Q No, no, you missed my question. Before we can
4 give an opinion, we have to run a test, don't we?

5 A No, sir.

6 Q Oh, we don't?

7 A Well, you have to run a test. You have to make a
8 comparison.

9 Q And if that comparison isn't made, then we shouldn't
10 give an opinion, should we?

11 A The comparison and the opinion?

12 Q No, no, no. You keep adding things that I don't
13 ask for. Before we can give an opinion, we have to run a
14 test and make comparisons, don't we?

15 A Yes, sir.

16 Q We are talking about being scientific, aren't we?

17 A Yes, sir.

18 Q And to be scientific, we have to run a comparison;
19 is that not correct?

20 A Yes, sir, you have to run a comparison.

21 Q And that wasn't done here with Carla Wilhite; was
22 it?

23 A No, sir.

24 Q Or with Dee Elder?

25 A No, sir.

1 Q Or with Barbara Day?

2 A No, sir.

3 Q How about old Ben Woodward?

4 A No, I don't believe he was.

5 Q Mary Ann Alaback?

6 A No, sir.

7 Q How about the people that put up the tents at
8 Camp Scott? Did anyone give you samples of their hair?

9 A I don't know who put them up, so I don't know.

10 Q Do you know if you had any samples of hair from a
11 man named Woodring?

12 A Um, I don't believe so.

13 Q Did you compare the hair of Richard J. Green?

14 A No, sir.

15 Q Page two - page five?

16 A No, sir, I did not.

17 Q You didn't? Did you compare the hair of Jack
18 Shroff?

19 A Yes, sir, I did.

20 Q And what were your findings?

21 A They were not consistent with any of the unknown
22 hairs previously mentioned.

23 Q Did you compare the hair of Richard Day?

24 A Yes, sir, I did, and again, they were not consis-
25 tent with the hairs mentioned.

1 Q Did you compare the hair of Leo Shroff, William
2 Leo Shroff?

3 A No, sir, I don't believe I did.

4 Q Now, on page six, Item CC-3?

5 A Yes, sir.

6 Q What comparison was made with the hair contained
7 in the pajama top of Item 87 which would have been the white
8 flannel pajama top removed from Doris Milner?

9 A There were a number of hair samples there.

10 Q Any of them Caucasian?

11 A No, sir, most of them were of a Caucasian-Negroid
12 mixture. That is, they were consistent microscopic character-
13 istics to the Milner girl.

14 Q Did you compare the hair of Mr. -- the head hair of
15 Mr. Chad Farmer?

16 A No, sir, I did not.

17 Q Item DD-5 through DD-15 are hairs from various
18 parts on the bodies of the members of the family. Did you
19 make any comparison of those hairs?

20 A No, sir, I did not.

21 Q Did you compare the hair of J. A. Hinteman?

22 A Yes, sir, I did.

23 Q And what were your findings?

24 A They were not consistent with the hairs mentioned.

25 Q With any of the hairs swept off the floors?

1 A Were they consistent with any of the hair swept
2 from the floor?

3 Q Yes, ma'am?

4 A None of the ones that I examined microscopically,
5 again.

6 Q You didn't examine all of them?

7 A No, sir, I did not.

8 Q So we don't know if any of his hair compared fav-
9 orably with that swept off the floor or not, do we?

10 A That's correct, the ones I did not examine.

11 Q How about the pubic and scalp hairs of Gary Heis-
12 lam? That's page nine, MM-5 and MM-6?

13 A No, sir, I did not compare those.

14 Q Okay. Miss Reed, directing your attention to the
15 report dated October 3rd of '77, which bears your signature?

16 A Okay.

17 Q Have you found that one, Ann?

18 A No. This isn't one of my better days.

19 Q There is the one that starts off DRS --

20 A Okay. I recall that one. It's in here somewhere.

21 Q Well, why don't you just look on with me?

22 A Well, here it is.

23 Q All right.

24 A I'm sorry. I've got so many of them.

25 Q Now, from Item TT-6-C, Number TT-6-C, speaking

1 about clothing labels GR for girls?

2 A Yes, sir.

3 Q I believe you compared three Caucasian hairs and
4 several known animal hairs?

5 A Non-human.

6 Q Non-human, and those were animal hairs, weren't
7 they?

8 A That's correct.

9 Q Where was Item TT-6 found and when was it submit-
10 ted to you?

11 A I don't believe I ever had that item. It had the
12 hairs that were removed from it.

13 Q And didn't these things come from a cave someplace
14 in Mayes County?

15 A Again, I really don't know, sir; I'm sorry.

16 Q Item TT-13. Where did that particular item of
17 evidence come from?

18 A Again, I don't know. I only received hair from
19 these.

20 Q And from that item, you got three Caucasian hairs
21 and several animal hairs; is that correct?

22 A That's correct.

23 Q Item TT-14, a yellow short sleeved shirt, Sears,
24 Size 14-14 1/2. You found two Caucasian hairs and one animal
25 hair; is that correct?

1 A Let's see, five Caucasian -- yes, sir, I believe
2 that is correct.

3 Q And Item TT-15, a light green, long-sleeved shirt,
4 western style, Trim-Tex, you found one hair with mixed
5 racial characteristics and five Caucasian head hairs; is that
6 correct?

7 A That's correct.

8 Q Where did that item come from?

9 A I have no idea, sir.

10 Q Did you bring a chain of custody report with you
11 so you could identify them for me?

12 A I have who submitted them.

13 Q Would you tell me that?

14 A Yes, sir, they were submitted by Pete Weaver,
15 Sheriff of Mayes County.

16 Q Do you know where Mr. Weaver obtained those items?

17 A No, sir, I do not.

18 Q Now, from Item TT-16, a pair of brown knit pants.
19 I believe you said you found one Caucasian pubic hair with
20 one Caucasian head hair and three animal hairs?

21 A That's correct.

22 Q Did you compare those with the hairs in the tent,
23 all these we've been talking about?

24 A No, sir, I did not. They are simply unknown hairs.

25 Q So we don't know if those hairs compare or not, do

1 we?

2 A That's right. They were simply unknown hairs.

3 Q Were any of those hairs compared with any of the
4 other hairs found at the crime scene?

5 A No, sir, they were not.

6 Q Directing your attention to Preliminary Report
7 No. 1, dated 7-7-77?

8 A This one?

9 Q Yes, ma'am?

10 Did you compare those hairs with the hairs of
11 Gene Leroy Hart?

12 A Yes, sir, I did.

13 Q And which ones did you compare?

14 A I compared the hairs from C-15 mentioned here as
15 four pieces of head hair with basically Mongoloid character-
16 istics. I compared one piece of head hair with basically
17 Mongoloid characteristics from CC-3 and three pieces of head
18 hair with basically Mongoloid characteristics from CC-2, and
19 I also compared the one hair from KK-20, the Band-aid.

20 Q K-2?

21 A Yes, sir, also JJ-1. I believe there were six
22 hairs that compared there.

23 Q What were your findings when you compared those
24 with the material submitted to you by Gene Leroy Hart for
25 comparison?

1 A That they were consistent in all microscopic
2 characteristics and came from the same source, one with
3 exactly the same microscopic characteristics.

4 Q In other words, we are saying it could have come
5 from the same origin, just like you said in your report; is
6 that correct?

7 A As I said before, you can't identify --

8 Q You can't identify someone, can you?

9 A No, sir.

10 Q You can't even identify sex, can you?

11 A No -- no, sir.

12 Q Okay. Of the hairs found on the bodies of the
13 victims, attached or in the sleeping bags, have you counted
14 each one of those hairs?

15 A No, sir, I have not.

16 Q You don't know how many hairs you have?

17 A No, I really don't know how many came from that
18 source, no, sir.

19 Q All right. The ones submitted to you from the tent
20 floor sweepings, do you know how many you have from that
21 particular activity?

22 A I only --

23 Q Investigation?

24 A Yes, sir, I only know the ones I compared. There
25 are a number of hairs. In most cases, you do not examine

1 every single hair that comes in.

2 Q Well, I didn't ask you that.

3 A But I'm saying I don't know how many were there.
4 I just took a sample.

5 Q Can you give me an estimate as to how many came
6 out of the sweeping investigation?

7 A There were a number of hairs.

8 Q Over a hundred?

9 A I would say somewhere around a hundred. But this
10 is an estimate.

11 Q How many hairs came from the sleeping bags?

12 A Oh, probably hundreds. There were a large number
13 of hairs from the sleeping bags.

14 Q Two hundred?

15 A I would hate to put a number on it because there
16 were so many.

17 Q Three hundred?

18 A There were just many; that's about all I could say.
19 Some probably weren't picked off.

20 Q Miss Reed, what text on hair examination do you
21 consider authoritative?

22 A I don't consider any as an authority. I --

23 Q Have you written or published in the field?

24 A No, sir, I have not.

25 Q Do you teach any courses in the field?

1 MR. FALLIS: If it please the Court, excuse me,
2 one moment. I believe the witness is attempting to respond
3 to his earlier answer --

4 MR. ISAACS: I am sorry I interrupted.

5 MR. FALLIS: And ask that she be allowed to respond
6 to his question.

7 THE COURT: You may answer his first question
8 about authoritative texts.

9 A (By Miss Reed) There are a number of articles and
10 publications on hair. Some of them are very good.

11 Q Do you consider the Journal of Forensic Science
12 authoritative?

13 A I think it can be a good source for some things.

14 Q Do you read that regularly?

15 A Not as regular as I should. I do read sometimes.

16 Q How about the book, Scientific Evidence by Andre
17 Moenssens?

18 A I have heard of the book, yes.

19 Q Haven't read it?

20 A I have glanced through different areas of it;
21 reading it from cover to cover, no, sir.

22 Q Can you give me the names of some books that you
23 think are particularly authoritative, dealing with hair?

24 A Again, there are some good books. As far as calling
25 any of them authority, no. Good publications, Achroscopy

1 of Hair published by Mr. Hicks of the FBI is a fairly good
2 text.

3 Q How do you spell that?

4 A Hicks?

5 Q No.

6 A Achroscopy?

7 Q Yes.

8 A Could I write it down for you? I'm much better
9 at writing than spelling. I don't write too well. I know
10 that's his first initial. I'm not sure.

11 Q Thank you. Can you think of any other authorita-
12 tive texts or journals in the field of hair?

13 A Again, the FBI has some publications out but I
14 would say this is probably one of the better ones that they
15 have come out with.

16 Q Miss Reed, who do you consider to be the leading
17 experts in the field?

18 A There are a number of people who work in this field
19 who are quite good. I could not tell you who I think would
20 be a leading expert in it.

21 Q Well, can you give me the name of someone that you
22 look to as an expert in this field?

23 A Again, there are a number of people who are quite
24 good in this field and who testify as experts in it.

25 Q Can you give me the name of one of them right now,

1 one in particular?

2 A Who I consider a person who testified as an
3 expert is a Special Agent Clark, who works for the FBI in
4 Washington, D. C., who is quite good.

5 Q Can you give me the names of some other people,
6 someone who has written a book in the field?

7 A Well, Mr. Hicks that I mentioned before. He's
8 quite good at it.

9 Q Anybody other than Mr. Hicks?

10 A At the moment, that's all that I can recall. I
11 am sure there are a number of people in the field.

12 Q Okay. Thank you, Miss Reed.

13 THE COURT: Redirect?

14 MR. FALLIS: Yes, Your Honor, just a couple of
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. FALLIS:

18 Q Miss Reed, in making your examinations where you
19 compared and found matching characteristics on the matters,
20 known hair from Gene Leroy Hart and the items from the
21 pajama top, from the binding and from the tent floor, did
22 you make that examination just once or more than once?

23 A I made it a number of times, sir.

24 Q Why?

25 A On hair comparisons, you never just look at two

1 hairs and say they match. You can't do that. You must
2 look at a number of hairs. Also, you look at them many
3 times because it is better to do this. It's better to
4 look at them, come back and look again. This is just a
5 good procedure to follow.

6 Q Is that to be sure, ma'am?

7 A Yes, sir, it is.

8 Q Ma'am, you stated in response to counsel's ques-
9 tions that you do consider people from the FBI as being
10 recognized experts in this area?

11 A They're quite good in this field, yes, sir.

12 Q Counsel asked you about publications from the FBI
13 concerning this area of expertise; is that correct?

14 A Yes, sir.

15 Q And your response, as I understand, you said you
16 did recognize these as being authoritative and helpful to
17 you?

18 A They're very good sources. As far as being
19 authoritative, that's carrying it a bit far but based on
20 education and experience, they are a help to us in the
21 laboratory.

22 Q And ma'am, counsel asked you how many Indians
23 were in the state of Oklahoma. May I ask you, ma'am, are
24 all Indian hairs alike?

25 A No, sir.

1 MR. FALLIS: Thank you. No other questions.

2 RE CROSS EXAMINATION

3 BY MR. ISAACS:

4 Q Miss Reed, you're not telling anybody that Gene
5 Leroy Hart was the man that committed these crimes, are you?

6 MR. FALLIS: If it please the Court, that's been
7 asked and answered.

8 MR. ISAACS: Just a second, Mr. Fallis.

9 MR. FALLIS: May I make my offer?

10 MR. ISAACS: You might run the courts in Tulsa
11 but you don't run them here in Mayes County.

12 THE COURT: Gentlemen, I hope that's the last time
13 I have to use the gavel during this hearing.

14 MR. FALLIS: May I make my objection, Your Honor?

15 THE COURT: Your objection is sustained.

16 MR. FALLIS: Thank you.

17 THE COURT: Has been asked and answered. Ask your
18 next question, Mr. Isaacs.

19 MR. ISAACS: No further questions.

20 THE COURT: Any redirect?

21 MR. FALLIS: No, Your Honor.

22 THE COURT: You may step down. Any other witnesses
23 today?

24 MR. WISE: Not today, Your Honor.

25 THE COURT: Court is in recess until 9:45 a. m.

1 tomorrow morning.

2 (WHEREUPON, the cause in hearing was recessed
3 until 9:45 a. m., on the 14th day of June, 1978.)
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