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STATE V. TAMARA MCDANIEL BEAN

EXCERPT OF TESTIMONY
OF
AGENT KAREN WINNINGHAM

THEREUPON,

KAREN WINNINGHAM,

having been called as a witness and having been duly sworn, was examined and testified as follows:

THE COURT: Thank you, ma'am.

DIRECT EXAMINATION

BY MR. DOZIER:

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

A. Karen Michelle Winningham.

Q. And Ms. Willingham [sic], what do you do, ma'am?

A. I'm a DNA analyst with the North Carolina State Crime Lab.

1 Q. Okay.

2 MR. DOZIER: Your Honor, we would submit
3 her, per stipulation, as a expert in the field of
4 analysis and interpretation of DNA.

5 MR. BOTCHIN: No objection.

6 THE COURT: Let her be received as an
7 expert in the field of DNA analysis without objection,
8 please.

9 Q. BY MR. DOZIER: Agent Willingham [sic], I'm
10 gonna refer to a report generated by you in your office,
11 lab number R2008-211929. Did you generate that report,
12 ma'am?

13 A. Yes, I did.

14 Q. Okay. Can you tell us what you do, as far as
15 when you analyze DNA, what process you go through, in --
16 in very general terms, because none of us know much
17 about DNA?

18 A. Okay. Well, first, can I start with what DNA
19 is?

20 Q. Uh-huh.

21 A. DNA is a chemical found in various cells
22 throughout your body. It's generally -- generally
23 referred to -- to -- referred to as our genetic
24 blueprint or outline because it determines our own
25 unique and individual characteristics. The majority of

1 human DNA is very similar, but there's a small
2 percentage that varies a great deal from person to
3 person, and it is these regions or areas of the DNA that
4 is used to -- in forensic DNA analysis to generate a
5 person's unique and specific DNA profile.

6 I typically receive items of evidence, and I
7 analyze the evidence using forensic DNA analysis. And
8 once the evidence -- the evidence is in the laboratory,
9 the DNA is released from the cell and those areas are
10 then further processed and analyzed to generate your DNA
11 profile.

12 Q. Okay. And was there a Remington shotgun that
13 was provided to you? I believe it's your Item 2.

14 A. Yes.

15 Q. Okay. All right. And were you able to test
16 that and see if there was any DNA material on the
17 Remington shotgun?

18 A. Yes.

19 Q. And what did you find?

20 A. No DNA profile was obtained.

21 Q. Okay. Now, why would there be -- you find DNA
22 on some things and not others? Is there any reason for
23 that?

24 A. There could be a lot of reasons for it. The
25 person may not have deposited enough skin cells to be

1 detected. You can have environmental factors, things
2 that would destroy the DNA, and you couldn't detect it.
3 DNA could be wiped away or, I mean, any number of
4 reasons why.

5 Q. Okay. Let's talk about -- and, again, I'm
6 referring to your -- your report. You actually
7 generated two reports, didn't you?

8 A. Yes, I did.

9 Q. Okay. Let's talk about the first one. I
10 guess the SBI, you -- y'all have general guidelines you
11 follow?

12 A. Yes, we do.

13 Q. Do those guidelines change occasionally, from
14 time to time?

15 A. Yes, they do.

16 Q. Okay. Now, at the time you did the first
17 report, what did you find as far as DNA on shotgun
18 shell, Number 6?

19 A. A partial DNA profile was obtained from the
20 swabbing from the shotgun shell, Item 6.

21 Q. And when you say "partial DNA profile," what
22 does that mean?

23 A. It means it's less than a whole. In this
24 particular instance, I only obtained one allele.

25 Q. One -- and what's an allele?

1 A. Allele is a -- a alternate form of a gene.
2 The DNA that you get from your parents, you get one set
3 of alleles from your mother and one set from your
4 father.

5 Q. And how many alleles are there?

6 A. In the 16 areas, you can have two per area.

7 Q. Okay. And how many alleles are you looking
8 for when you look at DNA material?

9 A. You're looking for all 16 areas.

10 Q. All 16 areas. And how many did you find?

11 A. I got one allele at one area.

12 Q. Okay. And would you consider that a small
13 amount of DNA material or a very small amount or a large
14 amount?

15 A. Very small amount.

16 Q. Very small. And, in fact, your original
17 report stated that there was no -- you couldn't draw any
18 conclusions because it was --

19 A. There was not -- I didn't feel there was
20 enough information to say one way or the other.

21 Q. Okay. And so did you have a conversation with
22 some folks -- I don't know if it was directly with
23 Mr. Botchin, but some people from his office?

24 A. Yes, I did.

25 Q. Okay. And as a result of that, can you tell

1 us what you told them?

2 A. I told Mr. Botchin when he looked at my case
3 notes, that the way it -- it would be worded now, and
4 due to policy changes, would be different.

5 Q. Okay. And what exactly did you tell him?

6 A. I told him that it was a limited DNA profile
7 and that T. Bean would be excluded.

8 Q. Tamara Bean would be excluded?

9 A. Yes.

10 Q. The defendant would be excluded from that?

11 A. Yes.

12 Q. And that was one shotgun shell out of how
13 many?

14 A. Four shotgun shells.

15 Q. Okay. And what about the other three shotgun
16 shells?

17 A. The other three shotgun shells, I didn't
18 obtain a DNA profile of.

19 Q. And why not?

20 A. It's possible that there wasn't any there or
21 there wasn't any DNA there.

22 Q. Okay. And why wouldn't there be DNA there?

23 A. Same reason for the shotgun. It could have
24 been wiped off. They may not have been handled enough
25 to deposit skin cells there. They may not have touched

1 it.

2 Q. Okay. And as a result of your conversation
3 with -- with Mr. Botchin -- and you talked with me,
4 also, after Mr. Botchin --

5 A. Yes.

6 Q. -- did you prepare a new report?

7 A. Yes, I did.

8 Q. Okay. And that's -- it's got the same lab
9 number. And do you have that in front of you? Dated
10 August 25th?

11 A. Yes, I do.

12 Q. Okay. And that -- does that reflect the DNA
13 tests, ma'am, that you had conducted earlier but
14 resubmitted an opinion on?

15 A. Yes.

16 Q. Okay.

17 *(State's Exhibit Number 19 was marked for*
18 *identification.)*

19 MR. DOZIER: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 Q. BY MR. DOZIER: I'm gonna hand you State's
23 Exhibit 19. Does that have your handwriting, ma'am, and
24 is that your report?

25 A. Yes, it is.

1 Q. Okay.

2 MR. DOZIER: Your Honor, we would move to
3 introduce State's Exhibit 19 into evidence.

4 MR. BOTCHIN: No objection.

5 THE COURT: Let State's Exhibit 19 be
6 received into evidence without objection, please.

7 *(State's Exhibit Number 19 was received*
8 *into evidence.)*

9 Q. BY MR. DOZIER: And, as a matter of fact,
10 State's Exhibit 19 would -- is more precise and more
11 accurate than the previous one. Would that be a fair
12 assumption to make, Agent Willingham [sic]?

13 A. Yes, it's more clear.

14 Q. Okay. And that would be because of the change
15 in protocols?

16 A. Correct. Yes, correct.

17 Q. Okay. Okay. And you volunteered that to
18 Mr. Botchin.

19 A. Yes, I did.

20 Q. Okay. And so of the four shotgun shells, you
21 found DNA on one, correct?

22 A. Yes.

23 Q. And on that one shell, you found only one
24 allele out of a possible 16 markers.

25 A. Right.

1 Q. Okay. Why don't you just go ahead and read --
2 if you would, just read the results of your examination,
3 as far as --

4 A. *(Reading from document.)*

5 "Examination of the swabbing from the one
6 live-round shotgun shell revealed -- Item 6,
7 revealed the presence of one allele."

8 Q. And then as you go through the items, just
9 tell us what that item is. Item 6 would be a
10 20-gauge --

11 A. 20-gauge live-round shotgun shell.

12 Q. And, of course, for those who aren't familiar
13 with firearms, live round means something that hasn't
14 been shot, correct?

15 A. Correct.

16 Q. Okay. Go ahead.

17 A. *(Reading from document.)*

18 "...revealed the presence of one allele.
19 Due to the limited amount of information
20 obtained from this profile, it is unsuitable
21 for upload into CODIS and can only be used for
22 exclusionary purposes. A DNA profile obtained
23 from T. Bean was excluded as a contributor.
24 No conclusion can be rendered as to the
25 contribution of the DNA profile from R.

1 Charles."

2 Q. Okay. So you can't draw any conclusions at
3 all from Mr. Charles. All right. And I believe you've
4 already stated there weren't -- there was not enough DNA
5 at all on the shotgun to tell anything.

6 A. Right. There was no DNA profile.

7 Q. Okay. All right. Now, don't let me
8 mischaracterize anything, but you're saying there was an
9 extremely small amount of DNA found on one of the four
10 shells. Is that correct?

11 A. Correct.

12 Q. Okay. And -- and is it possible to draw any
13 conclusions, any definite conclusions about who handled
14 those shotgun shells and who didn't?

15 A. No.

16 Q. And why would that be?

17 A. There's not enough information to say. One
18 allele doesn't give you identity of an individual.

19 MR. DOZIER: No further questions.

20

21

22 CROSS-EXAMINATION

23 BY MR. BOTCHIN:

24 Q. One allele gives you an -- an exclusion, a
25 non-match, in this case.

1 A. In this case.

2 *(Mr. Botchin and Mr. Dozier conferred.)*

3 MR. DOZIER: For purposes of the record,
4 the State has no objection to the defendant showing to
5 the jury and Agent Willingham [sic] a blowup of what has
6 been marked 19, Exhibit 19, for the State. And,
7 Mr. Botchin, if you want to mark it 19, that will be
8 fine.

9 MR. BOTCHIN: 19A?

10 MR. DOZIER: Yes. Yes, sir.

11 MR. BOTCHIN: Will you stipulate it's
12 19A?

13 MR. DOZIER: Yes, sir. That's fine.

14 *(State's Exhibit Number 19A was marked*
15 *for identification.)*

16 Q. BY MR. BOTCHIN: Agent Winningham, can you see
17 this?

18 MR. BOTCHIN: Your Honor?

19 A. Yes, I can.

20 MR. BOTCHIN: Y'all, if -- if -- all
21 right.

22 Q. BY MR. BOTCHIN: I know that going with the
23 report --

24 THE COURT: Are you able to read that,
25 Agent Winningham, at that angle?

1 THE WITNESS: Well, I still -- I have my
2 report in front of me.

3 THE COURT: Okay. All right. Thank you.

4 MR. BOTCHIN: And here's Exhibit 19
5 itself.

6 THE COURT: All right. I just wanted to
7 make sure she could see what you're referring to.

8 Q. BY MR. BOTCHIN: Now, you indicate very
9 clearly that Tamara Bean is excluded as a contributor,
10 correct?

11 A. Correct.

12 Q. Now, then actually on the very first report
13 that you did in this case that you provided to us by
14 e-mail, didn't that also exclude her, the one that's
15 marked canceled?

16 A. Yes, it did.

17 Q. And you just provided this yesterday.

18 A. Correct.

19 Q. Okay. But this isn't the one that was
20 provided as discovery previously, was it?

21 A. Right.

22 Q. So this one was rejected. Is that correct?

23 A. Correct.

24 Q. And that's why it says "canceled" across it.

25 A. Correct.

1 Q. And then it was changed to say "no conclusion
2 can be rendered as to either one."

3 A. Correct.

4 Q. That's despite knowing that there was an
5 exclusion as to Ms. Bean on that partial profile for
6 Item 6?

7 A. That was based on a conversation with the
8 technical reviewer.

9 Q. And you testified that the policies and
10 procedures have changed since this was rendered. Is
11 that correct?

12 A. Correct.

13 Q. Now, are you familiar with the Quality
14 Assurance Manual, Revision 07 of the STR Interpretation
15 Guidelines?

16 A. I would have to see it. I don't have it
17 memorized.

18 MR. BOTCHIN: May I approach, Your Honor?

19 THE COURT: Yes, sir.

20 A. Okay.

21 Q. BY MR. BOTCHIN: Now, I'll draw your attention
22 -- and I'll bring this back up in just amount -- to Page
23 10, section 2.5.4. It says (*reading from document*):

24 "It is scientifically acceptable for a
25 match or non-match to be determined for a case

1 when one or more of the loci yield inclusive
2 results. A match will be based only on loci
3 which yield conclusive results. An exclusion
4 will be determined if only one locus probe
5 produces exclusionary results."

6 Now, what is a loci?

7 A. That's the area of the -- the DNA.

8 Q. Okay. And in this particular case, did you
9 have one loci? Did you have one location that showed an
10 exclusion?

11 A. Yes.

12 Q. Okay.

13 A. However --

14 Q. Go ahead.

15 A. -- the area right above this also deals with
16 an inconclusive result.

17 Q. Please go ahead and read it.

18 A. *(Reading from document.)*

19 "Inconclusive results for an entire case
20 are usually the result of an insufficient
21 quantity of DNA or a complete degradation of
22 DNA present in a sample."

23 Q. Okay. But that's for a conclusion as to
24 inclusion. Is that correct?

25 A. No. That's for whether or not you're calling

1 a DNA profile conclusive or -- well, if you're calling a
2 DNA profile inconclusion -- inconclus- -- I'm sorry,
3 inconclusive or saying that no conclusion can be
4 rendered.

5 Q. Isn't it true that if an individual's alle --
6 allele does not match, that which is found is an
7 automatic exclusion?

8 A. Or if you have limited amount of DNA, you can
9 call it an inconclusive profile.

10 Q. So you're saying --

11 A. I'm saying at the time when that policy was
12 written, there was debate in the lab as to how you
13 should handle DNA profiles with very limited amount of
14 information.

15 Q. Then why is it with the first one that was
16 canceled, as you put down that she was excluded, if that
17 was the wrong policy to begin with?

18 A. It wasn't the wrong policy. We were trying to
19 make it more -- trying not to say one way or the other.
20 We can't make -- we were saying that this profile does
21 not generate enough information for us to make an
22 opinion one way or the other about who may or may not be
23 on this particular item of evidence.

24 Q. Define loci again.

25 A. Loci is the -- an area of DNA. You have 16

1 loci, the 16 areas of DNA.

2 Q. Those are called markers, basically, too.

3 A. They can also be called markers, yes.

4 Q. And, again, if they're -- at one loci, which
5 is DNA marker -- the first DNA marker that you got an
6 allele for, she is excluded. Then she is a non-match
7 and excluded. Is that correct?

8 A. It can be correct, yes.

9 Q. What do you mean "it can be correct"? Either
10 it is or it isn't.

11 A. Well, you're still looking at a very limited
12 amount of DNA. Is it possible that she contributed that
13 particular allele? No. However, you only have one
14 allele that you're looking at and you're calling the
15 whole profile just inconclusive.

16 Q. Okay. The data that you provided me last week
17 by e-mail, the 39 pages, the last three pages -- and
18 they're actually listed as 1, 2, and 3. Do you have
19 that available?

20 A. Yes.

21 Q. Page 1, the bottom bracket of data, which
22 starts with a item number, item description of the
23 markers and so forth?

24 A. Yes.

25 Q. All right. "Charles STD" means Charles

1 standard?

2 A. Correct.

3 Q. That's his DNA breakdown. Is that correct?

4 A. Yes, it is.

5 Q. For Randy Charles?

6 A. Yes.

7 Q. The next one over is "Bean Standard," Tamara
8 Bean. And that's her DNA breakdown. Is that correct?

9 A. Correct.

10 Q. Now, you found an allele for number 14, for
11 marker number -- for the first marker.

12 A. Correct.

13 Q. Okay. And that marker is DAS1179. Now, under
14 Mr. Charles, under Allele 1, he has 14. Under allele
15 two, then there's a line drawn. What does that mean?

16 A. It means that his second allele is also a 14.

17 Q. Okay. Also a 14. Now, on Bean, on Allele 1,
18 you have 13, correct?

19 A. Correct.

20 Q. Under Allele 2 for Bean, you have 15.

21 A. Correct.

22 Q. So it's impossible from a DNA perspective for
23 her to have number 14.

24 A. Correct.

25 Q. So she is excluded.

1 A. From contributing the 14, yes.

2 Q. Now, since there's that line down -- drawn
3 under Mr. Charles at 14, that means he had a double 14.

4 A. Correct.

5 Q. Okay. And since you only found a double --
6 found a 14, if we turn now to page 2 of those three, on
7 Item Number 6 under the -- the second column of the 20,
8 that's a 20 minute?

9 A. No, that's a 1 to 20 dilution.

10 Q. Dilution, I'm sorry. Under 1 to 20 dilution,
11 under that same marker, DAS1179, you have under Allele
12 1, you have 14. Under Allele 2, you have a line.

13 A. Yes.

14 Q. That means it was a double 14 in that case?

15 A. That's possible, yes.

16 Q. It's possible.

17 A. Uh-huh.

18 Q. Okay. So it's quite possible that what you
19 found was a double 14.

20 A. Correct.

21 Q. And Mr. Charles had a double 14 for that same
22 marker.

23 A. Right.

24 Q. So that means that would also increase the
25 likelihood of the probability, even with that partial,

1 that it's his DNA. Is that correct?

2 A. That he could have contributed the 14, yes.

3 Q. Now, we go from your report that was canceled
4 because you excluded Ms. Bean to a report where you did
5 not exclude her, but said no conclusion can be rendered
6 to two years later, a report that says she's excluded.
7 And it's a difference in policy?

8 A. It's a -- right, a policy change, a way to
9 interpret -- interpret limited DNA samples.

10 Q. Now, DNA has come a long way in the last 15,
11 20 years, hasn't it?

12 A. Correct.

13 Q. And it's helped exonerate a lot of people that
14 were wrongly convicted. Is that true?

15 A. That's true.

16 Q. And by providing a report that's inaccurate by
17 saying "no conclusion can be rendered," it's possible
18 that it could help convict somebody wrongfully.

19 A. I don't feel that a report is inaccurate if it
20 says inconclusive.

21 Q. But she's excluded, isn't she, as to that Item
22 6?

23 A. Yes. For that limited amount of DNA, yes,
24 she's excluded.

25 Q. Are you trying to say with more DNA sample on

1 Item Number 6 --

2 A. I'm saying with more --

3 Q. -- that she can now be included?

4 A. No, I'm not saying that at all. I'm saying
5 that the profile -- originally, the profile, the limited
6 amount of DNA, you just can't say who that belongs to or
7 you can't make any opinion about it.

8 Q. I'm not asking who it belongs to.

9 A. Now, if it -- well, I'm saying you would call
10 it an inconclusive profile. If that's all you had, it
11 was called an inconclusive profile in 2009. Policies in
12 the lab aren't static. It's a fluid system. We're
13 always trying to make it more clear and more concise,
14 and that's what the policy change reflects. And when
15 you mention the limited amount of DNA and who is
16 excluded -- and how it can only be used for exclusionary
17 purposes.

18 Q. Isn't it true that partial profile was
19 sufficient to exclude her from that, from Item 6?

20 A. Yes.

21 Q. Now --

22 *(Pause in proceedings.)*

23 Q. And that's what you put in the one that was
24 canceled --

25 A. Yes.

1 Q. -- after review.

2 A. Yes.

3 Q. And a new one was issued not excluding her.
4 Is that correct?

5 A. No con- -- no opinion was made about her,
6 period, yes. It was --

7 Q. I'm sorry?

8 A. -- an inclusive profile. No conclusion was
9 rendered about her, period.

10 Q. Okay. When you prepared the first report, you
11 knew she was excluded. Is that right? From that --
12 from the partial profile --

13 A. From the 14 --

14 Q. -- in Item Number 6.

15 A. -- she did not contribute the 14.

16 Q. Pardon?

17 A. From the 14 that was obtained, she could not
18 have contributed the 14.

19 Q. She could not have contributed the 14. But
20 that also means, since that's the only one you found in
21 the partial profile, that she could not have contributed
22 to the DNA found on Item 6.

23 A. Correct.

24 *(Pause in proceedings.)*

25 Q. I know hindsight is 50 -- 50/50, but don't you

1 wish you would have kept the first report?

2 A. Mr. Botchin, to me, and I'm looking at it
3 differently, I don't see a problem with either one.

4 Q. You're an agent of the State. Is that
5 correct?

6 A. Yes.

7 Q. You're a sworn law enforcement officer, even
8 though you work in the SBI lab. Is that correct?

9 A. Correct.

10 Q. One of the manuals that was in full force and
11 effect at the time of this incident reinforced the fact
12 that your job was to assist the State in prosecuting
13 cases. Is that correct?

14 A. I don't know what was in place. I know I
15 worked the cases as they were assigned to me.

16 Q. Are you familiar that that information hadn't
17 been revealed in the last two years?

18 A. What information? I'm sorry.

19 Q. The information that the manuals that were in
20 full force and effect two years ago, was that as an
21 agent of the State in the SBI lab, your job was to
22 assist the District Attorney's offices with the
23 prosecution of cases.

24 A. Okay.

25 MR. BOTCHIN: No further questions.

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THE COURT: Mr. Dozier?

REDIRECT EXAMINATION

BY MR. DOZIER:

Q. Ma'am, how many times have I called you about this case?

A. Before last week, none.

Q. And how did all this new information come to Mr. Botchin's attention?

A. I told him.

Q. You told him?

A. Yes.

Q. And, ma'am, have you falsified any data?

A. No, I have not.

Q. Have you been as honest as you could about every step you took in this?

A. Yes.

Q. Have you held anything back?

A. I have not.

Q. Thank you.

THE COURT: Mr. Botchin?

RECROSS-EXAMINATION

1 BY MR. BOTCHIN:

2 Q. Are you familiar with the ombudsman's report
3 regarding the SBI recommendations?

4 A. No, I'm not.

5 Q. Are you aware that he recommended that in
6 cases that are pending, that the analyst should go back
7 and review those and update any change in the policies
8 and procedures --

9 A. No, I'm not.

10 Q. -- for advance in technology?

11 Are you aware that the head of the SBI lab,
12 his responses --

13 THE COURT: Would you guys step up here
14 for one second?

15 *(Mr. Dozier and Mr. Botchin approached*
16 *the bench and conferred with the Court, outside the*
17 *hearing of the jury.)*

18 THE COURT: Go ahead, please.

19 Q. BY MR. BOTCHIN: Tamara Bean is excluded --

20 A. Yes.

21 Q. -- in the report that was issued yesterday.

22 A. Yes.

23 Q. Tamara Bean was excluded May 7, 2009. Is that
24 correct?

25 A. Correct.

1 MR. BOTCHIN: No further questions.

2 MR. DOZIER: Can I have one second, Your
3 Honor?

4 THE COURT: Yes, sir.

5 *(Pause in proceedings.)*

6

7

8 FURTHER DIRECT EXAMINATION

9 BY MR. DOZIER:

10 Q. Wouldn't it be more accurate to say that
11 Tamara Bean is excluded from one allele, one marker, out
12 of 16?

13 A. Yes.

14 Q. And wouldn't that be a limited amount of DNA?

15 A. Yes.

16 Q. And is that part of the problem, where the
17 first report says you couldn't draw any conclusions?

18 A. Yes.

19 Q. Okay. All right.

20 MR. DOZIER: Thank you.

21

22

23 FURTHER RECROSS-EXAMINATION

24 BY MR. BOTCHIN:

25 Q. Isn't it true that you cannot have more than

1 two alleles for a marker?

2 A. No, that's not true.

3 Q. You can have more than two?

4 A. In some genetic conditions, you can.

5 Q. She has 13 and --

6 COURT REPORTER: I'm sorry?

7 Q. BY MR. BOTCHIN: She has 13 and 15, correct?

8 A. Correct.

9 Q. She has 13 and 15 on that first marker. Based
10 on all of your training and experience and the STR
11 Quality Assurance Manual, she's excluded, correct?

12 A. Correct.

13 MR. BOTCHIN: No further questions.

14 MR. DOZIER: Nothing further.

15 THE COURT: Thank you, Agent.

16 *(The witness left the witness stand.)*

17

18 (END OF EXCERPT)

19
