

3501

2
0

2

2
2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
v.) NO. 75-26-CR-3
JEFFREY R. MacDONALD,)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: THURSDAY, AUGUST 2, 1979

PAGES 3501-3748 TRIAL DAY ELEVEN

km6

1 calls Mr. Terry Laber.

2 (Whereupon,

3 TERRY LEE LABER

4 was called as a witness, duly sworn, and testified as
5 follows:)

6 DIRECT EXAMINATION 11:06 a.m.

7
8 BY MR. MURTAGH:

9 Q Please state your name and spell it for the
10 reporter?

11 A Terry Lee Laber, L-a-b-e-r.

12 Q Where do you reside, Mr. Laber?

13 A I reside in St. Paul, Minnesota.

14 Q And are you employed, sir?

15 A Yes; I am.

16 Q In what capacity?

17 A I am employed as a forensic chemist for the
18 Minnesota Bureau of Criminal Apprehension Laboratory,
19 St. Paul, Minnesota.

20 Q Is that the State Crime Laboratory?

21 A Yes; it is.

22 Q Okay; and what in particular do you do for
23 them?

24 A For the Minnesota State Crime Laboratory, I
25 perform examinations on blood stains, hairs, fibers,

3.16

#11
pr 1



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FURTHER PROCEEDINGS (11:30 a.m.)

(The following proceedings were held in the presence of the jury and alternates.)

MR. SEGAL: May we see Your Honor, please?

THE COURT: Yes, come up.

BENCH CONFERENCE

MR. SEGAL: Just a moment ago, Mr. Murtagh informed me that this witness--the Government is going to have him attempt to fill in certain aspects of this chart that we disagree with. We think it is argument and not fact. That is, it is argument in terms of the way the chart is organized and arranged.

We would have to bring one of the charts up to show Your Honor, but what the Government is trying to show in these charts is Colette is Type A. He did certain tests, and it indicates it isn't Colette or it indicates it is Colette.

All he can say--he can't say a thing about Colette or anybody else. All he can say is indicate it is or it isn't in this particular blood area. The Government's charts tend to be specific to the persons in this case--their bodies; and there is nobody



11
pp-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

in the world, including this man, who can say that.

We are talking about four blood groupings which encompasses the entire world. Now, I don't object to his stating his conclusion that it indicates either A or whatever he wants to say. That's all right. It is the way they want to arrange it, you know, on an argument form on a board, trying to make it identify people as excluding or being put in, which I think is grossly deceptive.

THE COURT: Isn't there something that can be explained by his testimony that he does not, in fact, purport to say that it belongs to this person or other?

MR. BLACKBURN: The chart simply says the same group, as or inconsistent with the group.

MR. MURTAGH: In fact, I would welcome, Your Honor, an instruction from the Court to the jury that in regard to this testimony, it is for the jury to find--you know, if they find this blood, if they find it is Type A, whatever--that is the same group as. That is what he going to testify to.

He will not testify and none of our chemists will testify that this Type A is Colette's Type A. He can eliminate certain people as possible sources, but the chart is not argumentative. It merely marshalls--



THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH CAROLINA

6

3501

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
v.) NO. 75-26-CR-3
JEFFREY R. MacDONALD,)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: THURSDAY, AUGUST 2, 1979

PAGES 3501-3748 TRIAL DAY ELEVEN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

a mome.c.

(Counsel confer.)

MR. SEGAL: I have no questions for this witness, Your Honor.

THE COURT: No questions of this witness. Call your next witness.

(Witness excused.)

MR. MURTAGH: Your Honor, the Government would call next Mrs. Janice Glisson; but it would ask the Court's indulgence for perhaps a minute or two to mount some of these acetate sheets.

THE COURT: All right; you can have two minutes.

(Pause.)

MR. MURTAGH: Your Honor, in the interest of not wasting any more of the Court and jury's time, I think I can proceed with about four of these charts. Mrs. Glisson's testimony would be quite lengthy, I think.

THE COURT: If that was your idea of a minute, we certainly are glad you didn't need five.

(Whereupon,

JANICE S. GLISSON

was called as a witness, duly sworn, and testified as follows:)

(Go to the next page.)

36

7km3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DIRECT EXAMINATION 12:38 p.m.

BY MR. MURTAGH;

Q Please state your name, ma'am, and spell it for the reporter?

A Janice S. Glisson; J-a-n-i-c-e; S, period; G-l-i-s-s-o-n.

Q Ms. Glisson, where are you employed?

A At the United States Criminal Investigation Laboratories located at Fort Gordon, Georgia.

Q And in what capacity are you employed there?

A As a forensic chemist.

Q And what position, if any, do you hold in the Laboratory?

A I am the Chief of the Serology Section.

Q Let me ask you--what is the principal responsibility of the Serology Section at the Laboratory?

A The Serology Section accepts evidence dealing with physiological fluids and also in that Section, we remove trace elements. We also do the examination for hairs.

Q Ms. Glisson, the CID Laboratory at Fort Gordon--if you know--is responsible for what geographic area?

A The Continental United States.

20
pp-1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FURTHER PROCEEDINGS (2:30 p.m.)

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Good afternoon, ladies and gentlemen. Any further questions for this witness?

MR. BLACKBURN: I believe we do.

THE COURT: All right.

(Whereupon,

JANICE S. GLISSON,

the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

DIRECT EXAMINATION (2:31 p.m.)

BY MR. MURTAGH:

Q Mrs. Glisson, let me ask you with respect to Government Exhibit 314, the Hilton bathmat, that was collected from the abdomen of Colette MacDonald, whether you had occasion to perform any tests on that?

A Yes, sir.

Q And what test did you perform, please?

A I performed the absorption-elution test.

Q Okay, and I take it Dr. Chamberlain had done the crust test?

A That's right.

20
pp-2

1 W What were your results with respect to
2 stain area B?
3 A Stain area B, I found both the A antigen and
4 the B antigen.
5 Q And what conclusion did you draw from that?
6 A That the stain was Type AB.
7 Q And that would be the same group as?
8 A Kimberly.
9 Q Now, let me just ask you to take a look at
10 314 and see if you can tell us where stain area B is?
11 A Right here.
12 Q Would you point that out, please, to the
13 jury?
14 A It is this long stain, approximately two-
15 and-a-half inches long right here.
16 Q Mrs. Glisson, what other members of the
17 family can you eliminate, if any, as a possible source?
18 A I can eliminate Jeffrey, Colette, and
19 Kristen.
20 Q How about stain area D?
21 A In stain area D, I found the antigen A and
22 antigen B.
23 Q Is that basically the same as in area B?
24 A Yes, sir.
25 Q How about L?

4306

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: THURSDAY, AUGUST 9, 1979

PAGES 4306-4542 TRIAL DAY FIFTEEN



1
2
3
4
5
6
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FURTHER PROCEEDINGS 9:30 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Thursday, August 9, 1979, at Raleigh, North Carolina.

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Good morning, ladies and gentlemen. Were there further questions of this witness?

MR. SEGAL: Yes, Your Honor.

THE COURT: Let him come back, then.

(Whereupon,

PAUL M. STOMBAUGH

the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

CROSS - EXAMINATION 9:31 a.m.
(resumed)

BY MR. SEGAL:

Q Mr. Stombaugh, I believe when we adjourned yesterday afternoon, we were talking about the circumstances under which you obtained hair samples at a



8
p-4
1 with hands.

2 Q Did you do any such experiments, in this
3 case, so that you might have known imprints--that is,
4 have Ms. Green or someone to work with you to make a
5 print, using a viscose subject on fabric, and put it
6 next to that as I have just shown you there, to see
7 whether that might not be a heel print of the human
8 hand?

9 A No, sir.

10 Q Now, let's talk about something else. You
11 told us that you were also asked an interesting question
12 by the CID about the pajama top and whether you could
13 take the blue pajama top, which has a number of holes
14 in it, and correlate that and match those holes up in
15 some way with the number of holes in Mrs. MacDonald's
16 body---

17 A (Interposing). Yes, sir, that's--generally
18 that is the question that was posed.

19 Q Now, I think you told us the number of holes
20 that you were asked to match this way or refer to this
21 way. You gave us the number--it was 48 holes in the
22 pajama top?

23 A There were 48 puncture holes, sir.

24 Q 48 puncture holes in the pajama top?

25 A Yes, sir.



7520
AUGH

1 Q How many other holes were there in the
2 pajama top?

3 A Are you referring to the cuts, sir? There
4 were two cuts.

5 Q Yes. Actually there were more than two cuts
6 in Mrs. MacDonald's pajama top, weren't there?

7 A In Mrs. MacDonald's; yes, sir.

8 Q But in the blue pajama top, you said you
9 found two cuts and 48 puncture holes, is that right?

10 A That is correct.

11 Q And they asked you to match those up with
12 how many holes in Mrs. MacDonald's body in the upper
13 chest?

14 A Twenty-one (21).

15 Q Of course, Mrs. MacDonald also had some
16 holes in her upper body which were not puncture holes,
17 is that right?

18 A That is correct.

19 Q Well, what else did she have--number of what
20 we have reason to believe are stab wounds?

21 A Stab wounds; yes, sir.

22 Q How many of those?

23 A I don't recall how many stab wounds.

24 Q Did you make any effort to line up the stab
25 wounds in Mrs. MacDonald's body with the stab holes in

4359

1 Dr. MacDonald's blue pajama top?

2 A No, sir, they asked that I line up--or count
3 the number of cuts in her pajama top, which I did; and
4 I gave them a total number of cuts that I found.

5 Q Yes.

6 A Total number of puncture marks that I found.
7 They didn't ask me to count the number of stab wounds
8 in her chest. And I would have no direct knowledge on
9 that anyway, sir. I wasn't there when the autopsy was
10 performed.

11 Q Well, let me see if I understood the numbers
12 here. You say that Dr. MacDonald's top--48 puncture-
13 type holes?

14 A Yes, sir.

15 Q How many, what we will assume because after
16 we have heard so much about--how many knife holes and
17 knife cuts?

18 A In Dr. MacDonald's pajama top?

19 Q Dr. MacDonald, right.

20 A I found two.

21 Q In Mrs. MacDonald's body you found 21 punc-
22 ture holes?

23 A It was reported to be 21 puncture holes and
24 a photograph of the chest showed 21 puncture holes.

25 Q And how about stab wounds in Mrs. MacDonald's

43.61

1 body. What were you told, and what did the photograph
2 show you?

3 A Well, I didn't pay any attention to the
4 stab holes.

5 Q You mean all somebody asked you to do was
6 line up puncture holes but ignore the fact that there are
7 stab holes in Dr. MacDonald's pajama top, and there are
8 also stab holes in Mrs. MacDonald's body?

9 A That is correct.

10 Q Now, did you also examine Mrs. MacDonald's
11 pink pajama top itself for the number of holes in that?

12 A Yes, sir.

13 Q And how many did you find there?

14 A Eighteen (18), sir.

15 Q Eighteen stab or 18 puncture wounds?

16 A Cuts.

17 Q Eighteen cuts?

18 A Yes, sir.

19 Q How many punctures did you find in her pink
20 pajama top?

21 A Thirty (30).

22 Q So you have 48 in Dr. MacDonald's pajama
23 top--48 puncture wounds and puncture holes and two stab
24 holes--stab cuts?

25 A Yes, sir.



4201
400

1 Q In Mrs. MacDonald's pajama top, which she
2 was wearing when her body was found, she has got 30
3 puncture holes and 18 cuts, is that right?

4 A Yes, sir.

5 Q In her body you say you counted 21 puncture
6 holes but you don't know how many cuts, is that right?

7 A That is correct.

8 Q Then someone says to you, "See if you can
9 match up--take 48 holes in Dr. MacDonald's pajama--
10 puncture holes in the pajama top, and match them to the
11 holes in Mrs. MacDonald's body, but ignore the cuts as
12 far as matching them"?

13 A They didn't say ignore the cuts. They did
14 not ask that we do it.

15 Q Didn't you ask--say, "I'm a scientist here
16 in a forensic laboratory; I don't understand why you
17 ask me to do--just match up puncture holes and not match
18 up the cuts which are all, you know, generally in the
19 same part of the body?" Did you not ask them that kind
20 of question as a scientist?

21 A No, sir, I didn't ask that kind of question.
22
23
24
25

4362

ml

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q You just accepted their request and did what they asked?

A That is right.

Q The persons who made this interesting request of you were whom?

A Mr. Woerheide and Mr. Murtagh.

Q Mr. Murtagh, then Captain Murtagh, you mean?

A I don't recall whether he was a Captain then or with the Department of Justice, sir.

Q Now, in order to do this piece of work that they asked you, to see whether you could do this--what was it that you used as the base source of your information as to the blue pajama top and its position on Mrs. MacDonald?

A The base source was the photographs taken of the body, showing the pajama top on the body.

Q Yesterday a number of photos were marked here in evidence, but I want to ask, were you shown additional photographs of Mrs. MacDonald's body with the pajama top on it beyond the several that we saw in evidence here yesterday?

A Not that I recall, sir. We might have had some from far off, but the three that were introduced yesterday were the three that we used in folding the



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 20163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH, 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 pajama top back as the way it was then.

2 MR. SEGAL: Excuse me one second,
3 please.

4 (Pause.)

5 BY MR. SEGAL:

6 Q You took those particular three photographs
7 as being the ones that were most helpful to you; is that
8 right?

9 A Yes, sir; we used additional ones, but those
10 were the only ones I marked on.

11 Q Are there or are there not other photographs
12 which were used by you to try and ascertain how the paja-
13 ma top was on Mrs. MacDonald so that you could try and
14 make this little experiment of putting all 48 holes into
15 21 holes?

16 A There may or there may not have been. As I
17 said, it has been a good while since we did this, and I
18 was involved in it; but as I said, the photographs that
19 were introduced yesterday were the only ones that I
20 marked on. The various areas of the pajama top were used
21 in folding it.

22 Q Would I be correct in saying that the three
23 you marked on are the three that you principally relied
24 upon?

25 A Yes, sir; I think you can say that.

4364

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Now, you told us yesterday, however, that you did not really do this little demonstration exactly with the pajama top exactly the way it was on Mrs. MacDonald's body. Isn't that what you told us yesterday?

A No, sir; we folded it---

Q (Interposing) Did you say that or did you not say it yesterday? Then you can explain as long as you want.

MR. MURTAGH: OBJECT to comments of Counsel.

MR. SEGAL: It is not a comment to tell a witness he can answer. Your Honor, I resent that. It is not a comment to say that I will give him all the chance to answer a question. It interrupts cross-examination needlessly.

THE COURT: All right; now, if you have some objection to make, the customary way to do it is to come here. I will not take any lectures from Counsel from either side. If there is an objection and you want to be heard, we will hear it at the Bench.

MR. SEGAL: My response, Your Honor, is I do not think I was making a comment when I said I would give the witness a chance to answer.

THE COURT: There was an objection before the Court. I was prepared to rule on it, but we



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163 Raleigh, North Carolina 27611

MAIN OFFICE, RALEIGH 832-9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

had another lecture superimposed on the objection.

MR. SEGAL: I apologize.

THE COURT: That is what I am calling to your attention.

MR. SEGAL: I did not mean to do that. I thought it spoke for itself.

THE COURT: Restate your question and we will let the witness answer. Restate your question.

MR. SEGAL: Yes, Your Honor; just let me re-gather my thought on that question.

BY MR. SEGAL:

Q Do I recall you correctly as having told us yesterday here in court that you did not fold the pajama top in the demonstration exactly the way it appeared in the photographs?

A We folded the pajama top as close to it as it was, or appeared in the photographs.

Q That is the most you are willing to say about the way you folded it for your demonstration?

A And when we folded it that way, then we observed 21 holes in the top.

Q Before we get to the holes, I just want to understand whether, when you finished folding it, you think you got a fairly good replica of the way the garment was folded or laid over Mrs. MacDonald's body?

4366

1 A Yes, sir; I feel we did the best we could.

2 Q Well, doing the best you could, I am not
3 sure--is that the same as being a pretty good replica?

4 A I would say so.

5 Q Is that the strongest you are willing to
6 state in support of the way the garment was folded, that
7 that, you think, is the best you could do with it?

8 A Working with what we had, we did the best we
9 could, sir.

10 Q Well, now, tell us some of the ways how your
11 experiment in folding is really different from the photo-
12 graphs of which Mrs. MacDonald's body was used, or seen
13 by you, and you used it as a model?

14 A I hope I am answering your question, sir. We
15 folded the pajama top as close to as it appeared in the
16 photographs. Is that what you wanted, sir?

17 Q Let me ask you if you remember saying the
18 following yesterday and whether you wish to accept it or
19 alter it in any way. Referring to page 4197, line 12,
20 question by Mr. Blackburn:

21 "...To reach the opinion which you reached,
22 are you saying, sir, that the pajama top that
23 you have there and that you saw in the photo-
24 graphs was in exactly the precise position on
25 Colette's chest when these probes could have

cm6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

been made into her body? Answer: No, sir;

I am not saying that."

Do you recall that, or words to that effect?

A Yes, sir; that is the position of the pajama top on the body, and at that time I said the pajama top did not conform to the wounds. It appeared to have been pushed down.

Q I am going to read that next one and ask you if you recall saying immediately thereafter:

"...Question: Could you explain it a little bit more fully? Answer: In the photographs the pajama top is lower down on the chest and it appears to have been moved. If it was in the exact location, then you would be a little more assured that this happened. The pajama top is not--it appeared from the photographs to have been moved more down toward the abdomen."

Is that what your explanation was as to the difference between your demonstration and the photographs you were working on?

A I don't understand your difference, sir. I was explaining there that according to the photograph showing the damage in the chest, which was up here, and the pajama top down a little bit lower in the photographs.

4368

m7

1 that even though we could--and did--line up those holes,
2 we are not saying this is what happened. We are only
3 saying this could have happened. And I hope I made that
4 clear yesterday.

5 Q Well, I want to make that clear for myself,
6 Mr. Stombaugh. You are telling us today that in your
7 demonstrations--we have a photograph with the probes on
8 it--this demonstration 787(a); right?

9 A That is correct.

10 Q You are telling us now that that is not the
11 way the pajama top looked in the photographs on Mrs. Mac-
12 Donald's body that you were shown? Is that your answer?

13 A No, sir.

14 Q Are you telling us that your demonstration
15 here, 787(a), is set up the same way in the same position
16 as the photographs show of Mrs. MacDonald's body?

17 A I am telling you, sir, we folded the pajama
18 top the same way it appeared in the photographs. Then we
19 lined those holes up to see if it could be done.

20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

cks
1

BY MR. SEGAL:

Q The question was, sir: isn't it true that, in order to get this demonstration to work, you actually moved the pajama top in a higher position on Mrs. MacDonald's body than was seen in the photographs taken by the CID photographer?

A We did not move the pajama top on Mrs. MacDonald's body, sir. We had the pajama top in the laboratory, and we used an ordinary piece of soft material---

Q (Interposing) Forgive me. Let me correct myself.

MR. BLACKBURN: Your Honor.

THE COURT: Let him finish. Go ahead.

MR. SEGAL: Let me correct myself. This pad here used in the laboratory for the replica-- are you telling us that this is or is not set up in the same way as you saw it in the photographs of Mrs. MacDonald's body?

MR. BLACKBURN: Your Honor, we would OBJECT and ask that he be allowed to finish his last answer he was in the midst of giving.

THE COURT: I will let him answer that one and put in the other too if he wants to.

4371

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

0
cks
2

THE WITNESS: Mr. Segal, I have been

answering your question--the same one over and over--
the only way I can answer it. We folded the pajama
top the way it appeared in the photographs. We found
21 holes on the surface. The question was: could
these 21 holes on top be lined up with the 48 holes--
all of them lined up; could this be done; and we---

BY MR. SEGAL:

Q (Interposing) Didn't you just simply tell
them, Mr. Stombaugh, of course, you can take any 48
holes---

MR. MURTAGH: (Interposing) OBJECTION.

BY MR. SEGAL:

Q And put them in the 21 holes--that that is
not a scientific experiment; did you ever tell them
that?

THE COURT: Objection SUSTAINED.

Go ahead and finish your answer.

BY MR. SEGAL:

Q Go ahead, Mr. Stombaugh. If you have
anything more to say about that, go ahead and tell us.

A Go on, Mr. Segal.

Q Mr. Stombaugh, how many combinations are
there in which 48 holes can fit into 21 holes?

MR. MURTAGH: Your Honor, we would

1 OBJECT to the form of the question unless he is
2 referring to that particular pajama top.

3 THE COURT: Well, I will let the
4 witness answer this question. Can 48 holes be fitted
5 into 21 holes in any way other than the way you did it
6 in this case?

7 THE WITNESS: It is possible--of course,
8 there are other combinations.

9 BY MR. SEGAL:

10 Q And how many other combinations are there
11 possible of fitting 48 holes into 21?

12 A Sir, I have no idea. All I'm saying is
13 that we used up all 48 holes with 21 thrusts, and
14 we're just saying that it can be done. We are not
15 saying this actually took place. We are saying this
16 can be done. It could have taken place, and that's
17 all this demonstration represents.

18 Q You mean this is one way it could be done.

19 A That is correct.

20 Q And that you do agree that there are
21 numerous other ways it could be done?

22 A I have no idea how many other combinations.

23 Q That's the second question. The first
24 question is: you do agree that there are other ways
25 it can be done?

#10
cks
3



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 26163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

4372

cks
4

1 A Yes, sir.

2 Q And you have never experimented or

3 attempted to compute in any way the number of other

4 possible combinations in which the same thing could

5 be done?

6 A No, sir.

7 Q Now, Mr. Stombaugh, could you tell us

8 which of the various injuries--which of the various

9 holes here--were the ones that went up to the hilt of

10 the ice pick?

11 A Which holes?

12 Q Yes, sir.

13 A I made no mention in my notes, sir, of

14 which hole I observed and have it mentioned in my notes

15 that some of them appeared to have gone to the hilt.

16 Q And you made that conclusion that some

17 holes must have gone to the hilt and I gather you made

18 the conclusion that this ice pick had gone up to the

19 hilt on some holes because you measured the diameter

20 of these holes and found that the diameter equaled

21 the diameter of the ice pick at its widest point; is

22 that not how you arrived at your conclusion?

23 A Yes, sir; only I did not say that ice pick

24 made those holes. I said that ice pick could have

25 made those holes.

1 Q That's the only ice pick you worked with
2 in the laboratory; isn't that right?

3 A That's right.

4 Q You didn't try other ice picks.

5 A That is why I said that ice pick could have
6 made those holes.

7 Q Now, can you tell us which holes in Mrs.
8 MacDonald's body, based upon the autopsy report which
9 you said you had and the information that you got from
10 the Government lawyers, which holes in her body ever
11 were made by an ice pick puncturing up to the hilt?

12 MR. BLACKBURN: OBJECTION, Your Honor.

13 THE COURT: OVERRULED.

14 BY MR. SEGAL:

15 Q What is your answer?

16 A I have no idea.

17 Q Were you aware of what the pathologist
18 said as to whether or not any ice pick wound in Mrs.
19 MacDonald's body ever went in up to the hilt?

20 MR. MURTAGH: OBJECTION, Your Honor.

21 THE COURT: OVERRULED.

22 BY MR. SEGAL:

23 Q All right.

24 A I recall reading in the autopsy "deep
25 penetrating." I don't recall reading the length of

#10
ks
5



4374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the thrusts.

Q Did you read, "Most of the ice pick-like wounds were superficial in Mrs. MacDonald's body" in the autopsy report?

A No, sir.

Q Did you ever read that any pathologist had ever measured the depth of any ice pick wounds in Mrs. MacDonald's body?

A I don't recall it, sir.

Q If I were to suggest to you that there is no evidence that any pathologist found any bruising---

MR. BLACKBURN: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Tell us from your notes which of the holes you concluded by the numbers were ones that were made up to the hilt because you measured the diameter of the holes in the pajama top and found that to be equal to the diameter of the widest part of the ice pick.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED. He answered that.

MR. SEGAL: I'm sorry. I didn't get the numbers of any holes, Your Honor.

THE COURT: I understood the witness



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 26183
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

4375

1 to say that he did not know which ones went to what
2 depth. Was that your answer?

3 THE WITNESS: That was correct, sir.

4 BY MR. SEGAL:

5 Q Didn't you make a chart or graph of every
6 single one of these holes as part of the experiment
7 that you conducted?

8 A In 1971, sir, I drew in my notes a replica
9 of the pajama top and the various panels, and I put in
10 my notes a little dot with my pencil the approximate
11 location of the holes. At that time, I also put
12 beside the little dot the number I had assigned to that
13 particular hole on the pajama top.

14 In my general notes, I noted some of the
15 holes were an eighth of an inch in diameter and they
16 appeared to be very deep up to the hilt type holes.
17 I did not point out which ones, and that's the extent
18 of it.

19 Q Did you measure all the holes, that is to
20 say, all the puncture holes in the pajama top?

21 A The large ones I measured.

22 Q May have?

23 A I said, "The large ones I measured."

24 Q The large ones--how many were there
25 categorized by you as large ones?



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I have no idea at this time. There were several.

Q How about in your notes? Would that tell you how many large ones there were?

A No, sir; that's what's in my notes. "The holes vary in diameter up to an eighth of an inch."

THE COURT: Now we'll take our morning recess, members of the jury, and we'll come back at 11:30. Don't talk about the case.

(The proceeding was recessed at 11:10 a.m., to reconvene at 11:30 a.m., this same day.)

0
cks
8

4377

FURTHER PROCEEDINGS (11:30 a.m.)

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Did you finish with this witness?

MR. SEGAL: Not quite, Your Honor.

THE COURT: All right, let him come back, then.

(Whereupon,

PAUL M. STOMBAUGH

the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

CROSS - EXAMINATION (11:31 a.m.) (resumed)

BY MR. SEGAL:

Q Mr. Stombaugh, before the break I was talking to you about the puncture wounds and this experiment of lining up the various holes; you recall that, don't you?

A Yes, sir.

Q I gather that you have said that you don't have a record or you never made a record of which holes by number were the larger ones and which holes were the smaller ones?

4378

1 A That is correct.

2 Q Now, when you made this little demonstration
3 here, did you or did you not account for the fact that
4 you might have been pushing a steel rod through a hole
5 which, in fact, was going to come in contact with a place
6 on Mrs. MacDonald's body where the autopsy said she had
7 a very tiny or superficial mark; did you account for
8 that?

9 A Sir, we were just trying to account for the--
10 all 48 holes.

11 Q In view of that answer, I would be correct
12 in stating you did not try to account for the fact that
13 some holes are larger than other holes, but you didn't
14 try to figure that out and try to put these various rods
15 through the fabric and against what you thought were the
16 holes in the body?

17 A No, sir; we lined the--we were only interested
18 in a pattern--accounting for all 48 holes--and a pattern.
19 We came up with a pattern of five holes, which would have
20 been in the right chest, and 16 which would have been in
21 the left chest.

22 Q Now, if we had a situation--and I will do this
23 in rather magnified form so that we can all follow it.
24 Let's assume that we had a situation where the hole in
25 the pajama top was really made only by a weapon like this,

4374

1
p-3

1 but only up to about a half-inch. All right, that
2 would make a relatively small hole, would you say,
3 considering that the width?

4 A Yes.

5 Q If you had a hole like that in the pajama
6 top, and at the same time on the body of Mrs. MacDonald
7 we had a maximum-size hole, such as would be made by an
8 ice pick down to the hilt, right?

9 Now, in lining those things up to make this
10 little demonstration that you have shown us here in this
11 photograph, you made no attempt to account for the fact
12 that a small hole in the surface could not have made a
13 big hole in the body below, isn't that right?

14 A Lining the holes up in underneath, sir, was
15 done by Ms. Green.

16 THE COURT: Is she going to testify in
17 the case?

18 MR. MURTAGH: Yes, sir.

19 THE COURT: Maybe this question would
20 be better directed to her.

21 MR. SEGAL: I appreciate that. I will
22 only very briefly touch on the matter.

23 BY MR. SEGAL:

24 Q I gather that you told you us when you were
25 first questioned about this matter that you were the



438

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

supervisor of this work that Ms. Green did?

A That is correct.

Q And that you were up in some attic room in the FBI working on this, is that right?

A That is correct.

Q And you were there all or most of the time she was doing it?

A That is correct -- once we got it folded and got the 21 holes located on the top. It is a very time-consuming job. We both worked on it for a while, and then Ms. Green took over; and it took her a very long length of time to see if it could be done.

Q To see if just holes could be lined up in various fashion so that 48 holes could be found to equate with 21 holes in some way?

A That is correct.

Q But my particular question is, as far you know, Ms. Green at no time attempted to resolve the problem of how if you have a small hole in the garment and a large hold in the body underneath as to how you would account for those holes being made in that fashion?

MR. BLACKBURN: Your Honor, we would
OBJECT.

THE COURT: OVERRULED.

BY MR. SEGAL:



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832-9085

DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 Q What is your answer, sir?

2 A My answer, Mr. Segal, is that we were not
3 trying to line up holes with particular damage to the
4 body itself. We were just trying to determine if the
5 21--or the 48 holes could have been made by 21 thrusts,
6 and if so what would the pattern be. And we did get
7 a pattern of five holes and 16 holes, and accounted for
8 all 48 holes.

9 As I say, again, we are not saying this is
10 actually what took place. We made this demonstration
11 to see if it could have taken place.

12 Q And that is the question I want to ask you,
13 sir. Can you explain to the jury how this could have
14 happened the way you suggest, if you in no way ever
15 accounted for the fact that a small hole on the surface
16 of the garment could not possibly have made a large full-
17 to-the-hilt hole in the body underneath.

18 How could you possibly be offering this as
19 an explanation of the way it could have happened?

20 MR. MURTAGH: OBJECTION, Your Honor---

21 THE COURT: (Interposing) OVERRULED.

22 BY MR. SEGAL:

23 Q What is your answer, Mr. Stombaugh?

24 A It is quite possible, sir, that all the
25 holes on the top were large holes.

4382

1 Q I thought you told us--excuse me, go ahead
2 and finish your answer.

3 A I didn't make notes as to whether the hole
4 was a large hole, whether it was a small hole. All I
5 accounted for were the number of holes--punctures. I
6 made notes--a reference in my notes. Some of them
7 appeared to have been jammed up to the hilt--some of them.

8 I didn't point out in my notes which ones.
9 I don't have measurements by each one.

10 Q But by your own statement you agree that
11 some of the holes in the pajama top appear to be made
12 by an instrument like this ice pick having gone all the
13 way through to the hilt, because the diameter of the hole
14 that you found comported with the maximum width of this
15 ice pick, rather than the minimum width down at the
16 point?

17 A That is correct.

18 Q So, I ask you one more time, then, sir: how
19 can you say that your demonstration represents a way
20 this could have happened, if you did not account for the
21 fact that some of the holes on the surface were small
22 through which you put rods, and you don't know whether
23 you put them through large holes in the body. How can
24 you say it could have happened that way?

25 A Because I don't recall whether there were

4383

1 small holes on the top pointing down to a larger hole,
2 sir. And here again I am saying--I am not maintaining
3 it did happen this way. I am only saying it could have
4 happened.

5 Q I realize, sir--I know that you didn't say
6 it did happen this way. I am only asking you to tell
7 us, you know, how you can even arrive at the conclusion
8 that you did--when you don't know whether or not you
9 accounted for the fact that when you make a small hole
10 in the surface, you know, you could not have lined it up
11 with a large hole in the body underneath?

12 A I don't recall any testimony, sir, where I
13 said we lined up a small hole in the top with a larger
14 hole underneath.

15 Q I understand that, sir. I asked you whether
16 you had any records to show which holes were which
17 diameter and whether you accounted for that, and I under-
18 stood your testimony before to say that you had not
19 bothered to take that into accounting. All you did was
20 to find patterns, is that correct?

21 A I answered that several times, sir: no, I
22 did not keep a record of the diameter of the holes. I
23 only mentioned in my notes that some--and I didn't say
24 which--I said some had the general appearance of having
25 been thrust up to the hilt.

1
-8
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Did you take into account, in putting the various rods through, the angle at which you were putting those rods through the fabric?

A Yes, sir.

Q And how did you decide at what angle a rod should be put through. It is like a pincushion effect, if you will, here. How did you determine which rod should be at which angle?

A The rods are in there, sir, perpendicular as much as we could put them into the mounting medium. Now, in putting that together, Ms. Green will have sufficient charts to show you exactly how it was done.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Well, I need to know from you, sir, as the supervisor of this project--the person with overall responsibility--are you telling us that this photograph shows rods that are perpendicular to the body? Is that what you think it shows?

A I said, "as perpendicular as we could make them." The only thing we are demonstrating here is the location of the holes. Had we had them all side by side, you would not be able to see the number of the hole. You would not be able to see the numbers of the holes the rod passes through.

Q Mr. Stombaugh, I don't understand why you had to put the rods at some non-perpendicular angle to show numbers. Wouldn't it be simpler to show long rods in some places and short rods in some places, so that the little flags on them would not overlap--and therefore, you could have maintained perpendicularity to this whole project?

MR. BLACKBURN: Your Honor, we would OBJECT.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Did you consider doing that--putting the rods--using longer and shorter rods so you could maintain



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28183 Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085
DURHAM 471-3528
CHAPEL HILL 933-3754
PITTSBORO 542-3374

1 these rods in a perpendicular relationship to

2 -- what is this--foam rubber pad underneath here?

3 A Yes, sir.

4 Q Did you consider doing that?

5 A No; we figured what we did was sufficient to
6 show what could have happened.

7 Q As a matter of fact, you used all perfectly
8 evenly cut rods with exactly the same length for this
9 little demonstration?

10 A That is correct.

11 Q Having done that, there was no way that you
12 could possibly fit them all in at perpendicular angles;
13 isn't that right?

14 A We felt that the exhibit demonstrates what
15 could have been done.

16 Q Well, now, how did you know--let me put it
17 this way: what was this cushion that is supposed to
18 represent Mrs. MacDonald's body made out of?

19 A To the best of my knowledge it was foam rub-
20 ber covered with a piece of fabric.

21 Q It did not prevent you from putting the rods
22 in at perpendicular angles, did it?

23 MR. BLACKBURN: Your Honor, we would OBJECT
24 to this.

25 THE COURT: SUSTAINED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Did that create a problem in creating this demonstration, because it was foam rubber, in order to put your rods in at perpendicular angles?

MR. BLACKBURN: OBJECTION.

THE COURT: Yes; I think he said he did not do that. He said he did it as nearly as he could. I think you have explored that.

MR. SEGAL: I merely want to inquire, Your Honor, as to whether the material they used created some resistance that made it difficult beyond any other explanation---

THE COURT: (Interposing) I will let him answer that.

MR. SEGAL: All right, sir; that is my point.

THE WITNESS: What do you mean by "resistance," sir?

BY MR. SEGAL:

Q Well, because of the subject used as the base--this foam rubber--did that make it impossible to put these metal rods in at right angles perpendicular to it?

A No, sir; we used the substance underneath mainly to anchor those rods. The rods were placed in

1 there as they were so that we could get a clear picture
2 of the green flags which have the number of the holes in
3 the body. And the white flags have the number of the
4 hole that particular rod passes through.

5 Q Now, yesterday, you were shown and identified
6 photos marked 1137, and 1138 and 1139. Do you recall
7 that, Mr. Stombaugh?

8 A Yes, sir.

9 Q These are the photos that I believe you told
10 us were the principal ones that you and Ms. Green worked
11 on in creating this object called 787(a)?

12 A Yes, sir; that is correct.

13 Q It is your testimony today, I gather, that
14 787(a) represents, as near as you say you can get it, the
15 display of the pajama top with the holes lined up in the
16 fashion we have talked about--48 into 21?

17 A Yes, sir.

18 Q Are there no other pictures of this which
19 perhaps more similarly reflect the way the pajama top was
20 photographed--that is, here in 1139 you have what is a
21 photo that was probably taken with the photographer near
22 or almost astride the midpart, or the legs, of Mrs. Mac-
23 Donald. Do you see that photograph?

24 A Yes, sir.

25 Q Now, is there any reason why we don't have a

4389

1 photograph of this demonstration, 787, from the same
2 angle, so we could perhaps compare the pajama top the way
3 it was on Mrs. MacDonald's body, and the way you have
4 laid it out here?

5 A There is no reason. We took this photograph,
6 thought it was sufficient, and that is the reason.

7 Q 1137 and 1138 are the same photo, I believe,
8 are they not? These two are the same photograph?

9 A Yes, sir; one is---

10 Q (Interposing) Slightly larger?

11 A --cropped.

12 Q Cropped; all right. This, of course, was
13 again to help you ascertain the position in which the
14 pajama top was found on Mrs. MacDonald's body; is that
15 correct?

16 A That is correct.

17 Q Is there any reason why no photograph was
18 taken of model 787-as shown in 787-from the same angle,
19 so the jury could compare and see how similar the work
20 was that you did?

21 A No reason, other than the fact that we took
22 this photograph and thought it was sufficient.

23 Q Were any other photographs taken that you
24 know of, of this model at the same time that 787 was
25 taken?



4390

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A Not that I recall.

Q You mean, a single photographer was brought in from the FBI and a single photograph was taken and that is it?

A A single photographer in the FBI--there is many of them in the Document Section--it is a matter of just walking up a flight of steps. We did not pull him in for that.

Q You took this display up to him somehow and said, "Take a photograph"; right?

A To the best of my knowledge, I don't recall whether he came up there or whether we took it to the Document Section and carried it.

Q Whatever was done, either this thing was carried--I gather rather carefully, I am sure--downstairs or he brought his camera upstairs, and you tell us one photograph was taken from this angle?

A To the best of my knowledge; yes, sir.

Q Who was it who directed the angle that the photograph should be taken from?

A We left that up to the discretion of the photographer taking it.

Q Did you tell him what you were trying to depict in this particular item--that is, depict how it compared in some fashion with these photographs. Did you

4391

m7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

tell him, "These are the photographs that we are trying to show were done as a similar reconstruction." Did you show that to the photographer?

A No, sir; we took that down, told him we wanted a picture taken of it.

Q Just a little shapshot, right?

A A little more than a snapshot.

Q Well, I would like to show you some other photographs, if I may--oh, I beg your pardon. Before I show you photographs, I want to show you something else. You wrote a report, did you not, Mr. Stombaugh, about this demonstration or experiment you were working on; is that right?

A Yes; I wrote a report, and the results of this were reported at one time.

Q Let me show you a copy of that report, which I would mark as a Defendant's Exhibit, if we may--as D-55 for identification.

(Defendant Exhibit 55 was marked for identification.)

I show you D-55, and ask you if you recognize what it is?

A Yes, sir; this is my report, written October 17, 1974.

Q I would like to show you one page, page four of that, which I have enlarged, marked D-52 for

439.

km8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

identification.

(Defendant Exhibit 52 was marked
for identification.)

I would ask you take a look--in fact, I will hold it up.
That is a poor way of doing it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q If you would just read this whole three paragraphs. There is something I want to particularly ask you about. You may follow from that copy there, rather than this one.

A Do you want the whole page read?

Q If you would, start from "Result of Examination."

A All right.

"Result of Examination. It was previously reported in Laboratory Report P-C-F-72-79-JD dated July 2, 1971: Q12, blue pajama top contained a total of 48 puncture holes possessing characteristics indicating Q12 was stationary when holes were made.

"Analysis of these holes relects 12 holes, numbered one through twelve, appear in the back left panel; five holes, numbered 13 through 17, were in the upper right back panel; thirty holes, numbered 18 through 47, were in the right shoulder area; and one hole numbered 48, located near the back shoulder seam of the left sleeve.

"A study of photographs depicting Q12 laying on the body of Colette MacDonald



PRECISION REPORTING AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471 3528
CHAPEL HILL 933 3754
PITTSBORO 542-3374

1 revealed that the portion trailing off on
2 the floor to the left of the body to be the
3 left front panel and front left sleeve of
4 Q12 with the left cuff and back portion of
5 the left sleeve located on the floor ad-
6 jacent to the body. It is to be noted that
7 there were no puncture holes found in these
8 portions of Q12.

9 "The right shoulder area of Q12, inside
10 out condition, was located on the left chest
11 area of the victim with the right sleeve
12 draped across the body. The right sleeve
13 has also been turned inside out."

14 BY MR. SEGAL:

15 Q In regard to the last paragraph, I would
16 appreciate it if you would just read the first sen-
17 tence at this time. If we need the rest later on, we
18 will ask you. Just the first sentence.

19 A "Through folding Q12 in this same manner
20 as it is depicted in the photographs, it was
21 found that the puncture holes present in Q12
22 fell into two general groups."

23 Q In other words, you wrote in your report that
24 you had folded Q12 in the same manner, is that right?
25 Those were your words in your report? Is that correct?



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 26163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471 3528
CHAPEL HILL 933 3754
PITTSBORO 542 3374

4395

1 A Yes, sir.

2 Q Do you stand by those words, that you folded
3 the pajama top in the same manner that they appeared in
4 the picture?

5 A As best we could, in the same manner. Yes,
6 sir.

7 Q Does it say there, "To the best I could," or
8 do you say, "Folding Q12 in the same manner as depicted,
9 it was found that the puncture holes presented fell into
10 two groups"? Did you qualify that in your report?

11 A Those are my reports, sir.

12 Q Excuse me. Let me give you a date. October
13 17, 1974.

14 A That is correct.

15 Q You did not qualify it?

16 A It was not necessary.

17 Q You also testified before the Grand Jury,
18 did you not, Mr. Stombaugh?

19 A I did.

20 Q And that was on January 15, 1975, just about
21 two and a half months after you wrote that report. Is
22 that correct?

23 A That is correct.

24 Q Now, in this regard, I would call to your
25 attention your testimony on page 28 and ask you, if you



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH, 832 9085

DURHAM 471 3528
CHAPEL HILL 933 3754
PITTSBORO 542 3374

4396

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

would--I am going to show an enlargement to the jury of what has been marked as Defendant Exhibit 53.

(Defendant Exhibit 53 was marked for identification.)

BY MR. SEGAL:

Q In fact, let me have you start if you don't mind, by reading the last paragraph of page 27 to give us the context, and I will ask you to read to the end of line 15, if you would please, Mr. Stombaugh, starting here.

A "Now, to start--excuse me--(witness drops photograph), now in studying the pictures of Colette, found on the floor, we see that she has this blue pajama top draped over her. And studying the thing a little bit further, it's easy to realize in trying to fold this back in the position that this portion trailing off onto the floor, all the way down, is the left sleeve--the left torn sleeve of that pajama top as well as the left front panel.

"These are the only portions of that pajama top that don't have puncture holes in them.

"So, it led us to believe quite possibly that maybe she was stabbed through the



1 pajama top. So, what we did, we refolded
2 the pajama top exactly as it appears in
3 these pictures, and in the picture here
4 the right sleeve is turned inside out,
5 and trails across the body in this fashion.
6 And the bottom of it was pushed up."

7 Q That is as far as you need to go. In line
8 13, you described how you refolded the pajama top, I
9 believe, exactly as it appears in these pictures. Is
10 that correct? Is that what you said at the Grand Jury?

11 A That is what I said at the Grand Jury. Yes,
12 sir.

13 Q You don't withdraw that statement, do you?

14 A Of course not.

15 Q The pictures you were referring to that you
16 made it exactly like were Government 1139 and 1138.
17 Those are the pictures that, principally, you were re-
18 ferring to?

19 A Yes, sir.

20 Q Now, if I may ask you to come down if you
21 don't mind, Mr. Stombaugh, and if you could stand just
22 on that side, let me indicate to you what I have already
23 showed the Government that, over here in the photograph
24 which is marked D50 for identification which is a
25 portion of this photo, just minus the trailing sleeve.



439E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Do you recognize that as being the same photo?

A Yes.

(Defendant Exhibit 50 was marked for identification.)

Q Let me also show you on here, there is an exhibit marked D41 which is also Government Exhibit G44. It is also 1139 which is the one, the copy of the same photo you marked up. You recognize it, do you not?

A I do.

(Defendant Exhibit 41 was marked for identification.)

Q And then here, I show you Defendant Exhibit 42 which is also originally Government Exhibit 43, plus your marked-up versions are 1137 and 1138. You recognize those photos, do you not?

A Yes, sir.

(Defendant Exhibit 42 was marked for identification.)

Q And I have placed on top of these a grid with a one-inch scale to it which we have marked D43(a) for the vertical grids and then D44 for the horizontal grids.

(Defendant Exhibits 43, 43(a) and 44 were marked for identification.)

Q Mr. Medlin left this for me so we can use this. All right, I would like you to take a look at



4396

1 the material which is shown here in your photograph
2 of your model at what I would call--let's see--
3 B-C-D, go down to 9 and 10. Do you see here in the
4 exhibit what appears to be the cuff opening of a
5 pajama top? Do you see that?

6 A Yes, sir.

7 Q Now, will you please show me either on 41,
8 the picture of Mrs. MacDonald's body, or on 44, the
9 side view of Mrs. MacDonald's body, where that is
10 visible?

11 A Here is the cuff, right here.

12 Q In your view, the display that you have on
13 your photograph is identical to, or exactly the same
14 as it appears here in the picture of Mrs. MacDonald's
15 body. These two are exactly the same in your view?

16 A They are not exactly the same, sir.

17 Q All right, let me just see now. I want to
18 go back and ask, so when it says here in your Grand
19 Jury testimony that, "We folded the pajama top exactly
20 as it appears in these pictures," you think that is
21 still a correct statement of what you did?

22 A We folded the pajama top exactly as it
23 appears in the pictures to make our examination. I did
24 not say that this picture right here depicts folded
25 exactly. The picture was only taken to show it could be done.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Now, if you would take a look in your picture at the area of this garment which is found roughly between "G" and "H," and located in block number 10, you notice there is a flap. It looks like two edges of the pajama top. Do you see that? We are looking here at "G" and "H" and we're looking down at block 10. First, do you notice the letters that I have pointed out?

A Yes; I notice it.

Q Now, would you please show me where on the picture of Mrs. MacDonald's body--you may use either one of these two photographs--where the fabric is seen folded in any form, shape, or fashion like that?

A In the first place, this drapes off the edge. On the body, that area is flat, and that matches right in here.

Q Well, were you able to somehow on the photograph lift the bath mat and see how it was laid out there?

A How are you going to lift something off the photograph?

Q I don't know, sir. I wish you would tell me how you were able to ascertain that this is the proper way that this particular--as you show it here

CRS
2

1 on your model--how you ascertained that was the way
2 it appeared on Mrs. MacDonald's body.

3 A As I pointed out, sir, my testimony here
4 and in the report is not regarding this particular
5 photograph. We refolded this the best we could to
6 duplicate how it appeared here and here to see if we
7 could take care of 48 holes and account for all of
8 them with 21 thrusts which we did.

9 This photograph just shows that it could
10 be done.

11 Q Now, take a look if you will, Mr.
12 Stombaugh, on your model photograph, and I'd like to
13 direct your attention to the area which is located
14 between "D," "E," and "F" on the grid coming down to
15 8, 9, and 10, and I ask you if you notice a sewed
16 thread here which looks like the cuff sleeve. Move
17 over so the members of the jury can see it after you
18 have looked at it.

19 A Yes; this is the inside seam of the sleeve.

20 Q Now, would you please show me where, first
21 of all, on the picture that shows Mrs. MacDonald's body
22 where you find that in this fashion?

23 A Right here is the inside seam.

24 Q All right, now, let's put the grid back
25 over it and just move this slightly, and you were

1 saying that the seam as you see in the picture here
2 is between "H" and "I" and it is just about between the
3 seventeenth and eighteenth block; is that right? Is
4 that the location we are talking about?

#14
cks
3

5 A Yes; that's the location.

6 Q And is it your position that this is now
7 folded precisely as seen on Mrs. MacDonald's body; it
8 is folded precisely that way on your demonstration
9 model here?

10 A As I pointed out, sir, this photograph is
11 not the one I said was folded exactly in this manner.
12 It is folded as close as we could get it on what we
13 had. We did not have a dead body there to put it on.
14 We used this mounting medium. You could move your
15 A, B, C's and 1, 2, 3's, your grid all over the place
16 here to conform to that if you wished.

17 Q Mr. Stombaugh, you know, as a matter of
18 fact, you had a dressmaker's dummy that you used for
19 further models later on in this case; don't you?

20 A Later on in this case, sir.

21 Q But the FBI didn't happen to have one at
22 the time you did this; right?

23 A No, sir.

24 Q I see. When was the dressmaker's dummy
25 bought?

44C

1 A After I retired.

2 Q Tell me, in all your experience in the FBI,
3 you never used a dressmaker's dummy in any way for the
4 reconstruction of models of any sort?

5 A We had a---

6 MR. BLACKBURN: (Interposing) Your Honor,
7 we would OBJECT to this.

8 THE COURT: SUSTAINED.

9 BY MR. SEGAL:

10 Q Let me ask you, Mr. Stombaugh, if you will
11 take a look at this exhibit at E-6 and at F-6, and I
12 ask you if you notice that there is a seam--I would
13 suggest and you can tell me better--whether that looks
14 like an inside-out seam there.

15 A Yes, sir; that is a continuation of the
16 inside seam on the right sleeve.

17 Q Now, would you please show me on either
18 one of these photographs--the one of Mrs. MacDonald's
19 body, 141, and then on the other one, 142--where the
20 seam appears in this fashion? Go ahead.

21 A Here (indicating).

22 Q You are indicating that you see the seam--
23 give us the grid coordinates, please.

24 A I-16.

25 Q And your opinion is that it is now

1 displayed over here on your model the same way it
2 appears at I-16; is that what you are saying?

3 A Similar fashion.

4 Q Similar fashion--that's the best you can
5 say.

6 A Again, I have to point out that this
7 photograph made the garment not to show exactly the
8 same folding. I'm saying this for about the fifth
9 time.

10 Q Well, let's make it for the last time,
11 Mr. Stombaugh--maybe the next to the last time. Let's
12 look at K-7, if you will. Do you observe here in K-7
13 a--it looks like--upside down U-shaped that appears
14 to be an inside seam?

15 A Yes, sir.

16 Q All right, now, with that located, can you
17 tell me where you can find that on, say, Defendant
18 Exhibit 41 of Mrs. MacDonald's body?

19 A I'm trying to figure out which seam it is.
20 You also have to take into account, sir, the angle of
21 these photographs is entirely different.

22 Q I agree, sir. That's why I asked you why
23 there isn't a photograph of your model here at the
24 same angle of Mrs. MacDonald's body?

25 A Because how would you know what angle Mrs.

#14
ks
5

490

#14
cks
6

1 MacDonal'd's body was to begin with and, secondly,
2 as I said before, this was not taken to depict the
3 exact folding of this. It was taken to show the left
4 sleeve and panel trailing off to show that, when
5 folded in this manner, the probes were put through
6 to account for the holes. I don't know what direction
7 you are going here on your photographs and your pretty
8 exhibit.

9 But, as I have said before, this was not
10 taken to show that it was folded exactly as it is in
11 the pictures. We did that when we got the holes lined
12 up. This is just to show that it can be done.

13 Q Mr. Stombaugh, as part of the earlier part
14 of your answer, you asked a question of me about how
15 could one get the same angle that Mrs. MacDonald was
16 photographed. I will ask you a question in response:
17 did you ever ask Mr. William Ivory or Mr. Squires, the
18 photographer, where they stood and how tall was Mr.
19 Squires when he made this particular photograph that's
20 marked D-41 so that you could perhaps duplicate that
21 photograph when you took a picture of your model?

22 A No, sir.

23 Q It never occurred to you, as a matter of
24 fact; is that right?

25 A I did not feel it was necessary.

440

14
cks
7

1 Q Now, if you would, instead of looking
2 at your model, take a look at D-41, the picture of
3 Mrs. MacDonald's body here, and I ask you to take a
4 look at the coordinates. Let's go down O-16 and running
5 all the way over to the left of O-16 across, apparently
6 winding up at G-17. Do you observe what appears to be
7 a seam across there? You may lift the grid if you
8 would like to, sir.

9 A Which one--this one?

10 Q Well, let's do this one.

11 A This one; yes, sir.

12 Q You are talking about this seam which I am
13 pointing across and giving the coordinates. Would you
14 please show me where on your model you can show me that
15 seam which runs, Mr. Stombaugh, from the left side of
16 Mrs. MacDonald's body all the way to a little past
17 the mid-section?

18 A It is not visible from the angle of the
19 photographer.

20 Q But you are sure it is there?

21 A I am sure it is there; yes.

22 Q Now, putting aside all these coordinates
23 for a minute, I ask you to take a look at your own
24 model as depicted in D-50, do you see where--would it
25 be fairly correct that it has a sort of volcano's mouth

440

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

impression--that is, where the fabric is pulled up
and around here looks like the top of a volcano if I
could use a crude analogy. Do you see that?

A Yes, sir.

4
CKS
8

440

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q Will you show me anywhere on the picture of Mrs. MacDonald's body here, 41 or here at 42, where you see that effect of where the fabric is gathered?

A The fabric is not gathered, sir. There are 21 probes holding this fabric down flat. There are no 21 probes visible going through that would hold the fabric down in this way.

Q Well, what I was trying to discern is whether I--again, using my rough analogy of this being like the top of the mouth of a volcano, do you see anywhere here on the picture of her actual--of her body--anything, you know, that resembles this big, curving, circular surface that you have in your model?

A To explain, sir, the fabric is being held down and pushed down, giving it the effect of your so-called volcano, with all these probes going through it.

Q With the grid off -- would you show me, please, where any of your probes have anything to do with this volcano mouth effect here?

A Sir, as I said before, the probe holds the fabric down. Had there been a probe through this right here, that would have been down.

Q Did you ever write a supplemental report after you had looked at all these pictures, in which



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28183
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471 3528
CHAPEL HILL 933 3754
PITTSBORO 542 3374

4409

1 you corrected the statement you made to the Grand
2 Jury---

3 MR. BLACKBURN: (Interposing) OBJECTION.

4 THE COURT: SUSTAINED.

5 BY MR. SEGAL:

6 Q Have you ever written any supplementary
7 reports describing your own evaluations of this model
8 that we have here?

9 A No, sir.

10 MR. SEGAL: All right, you can go back
11 to the stand now, Mr. Stombaugh.

12 (Counsel confer.)

13 BY MR. SEGAL:

14 Q Finally, Mr. Stombaugh, did you have anything
15 to do with a later re-make of this model that was pre-
16 pared in connection with this case?

17 A No, sir.

18 MR. SEGAL: All right, thank you,
19 Mr. Stombaugh. I have no further questions.

20 THE COURT: Any redirect?

21 MR. BLACKBURN: Yes, sir.

22 THE COURT: Very well.

23 R E D I R E C T E X A M I N A T I O N (12:13 p.m.)

24
25 BY MR. BLACKBURN:

4409

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you corrected the statement you made to the Grand
Jury---

MR. BLACKBURN: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Have you ever written any supplementary
reports describing your own evaluations of this model
that we have here?

A No, sir.

MR. SEGAL: All right, you can go back
to the stand now, Mr. Stombaugh.

(Counsel confer.)

BY MR. SEGAL:

Q Finally, Mr. Stombaugh, did you have anything
to do with a later re-make of this model that was pre-
pared in connection with this case?

A No, sir.

MR. SEGAL: All right, thank you,
Mr. Stombaugh. I have no further questions.

THE COURT: Any redirect?

MR. BLACKBURN: Yes, sir.

THE COURT: Very well.

R E D I R E C T E X A M I N A T I O N (12:13 p.m.)

BY MR. BLACKBURN:



PRECISION REPORTING
AND TRANSCRIBING, INC.

P. O. Box 28163
Raleigh, North Carolina 27611

MAIN OFFICE RALEIGH 832 9085

DURHAM 471 3528

CHAPEL HILL 933 3754

PITTSBORO 542 3374

#10
cks
3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OBJECT to the form of the question unless he is referring to that particular pajama top.

THE COURT: Well, I will let the witness answer this question. Can 48 holes be fitted into 21 holes in any way other than the way you did it in this case?

THE WITNESS: It is possible--of course, there are other combinations.

BY MR. SEGAL:

Q And how many other combinations are there possible of fitting 48 holes into 21?

A Sir, I have no idea. All I'm saying is that we used up all 48 holes with 21 thrusts, and we're just saying that it can be done. We are not saying this actually took place. We are saying this can be done. It could have taken place, and that's all this demonstration represents.

Q You mean this is one way it could be done.

A That is correct.

Q And that you do agree that there are numerous other ways it could be done?

A I have no idea how many other combinations.

Q That's the second question. The first question is: you do agree that there are other ways it can be done?

4372

1 A Yes, sir.

2 Q And you have never experimented or
3 attempted to compute in any way the number of other
4 possible combinations in which the same thing could
5 be done?

6 A No, sir.

7 Q Now, Mr. Stombaugh, could you tell us
8 which of the various injuries--which of the various
9 holes here--were the ones that went up to the hilt of
10 the ice pick?

11 A Which holes?

12 Q Yes, sir.

13 A I made no mention in my notes, sir, of
14 which hole I observed and have it mentioned in my notes
15 that some of them appeared to have gone to the hilt.

16 Q And you made that conclusion that some
17 holes must have gone to the hilt and I gather you made
18 the conclusion that this ice pick had gone up to the
19 hilt on some holes because you measured the diameter
20 of these holes and found that the diameter equaled
21 the diameter of the ice pick at its widest point; is
22 that not how you arrived at your conclusion?

23 A Yes, sir; only I did not say that ice pick
24 made those holes. I said that ice pick could have
25 made those holes.

1 Q That's the only ice pick you worked with
2 in the laboratory; isn't that right?

3 A That's right.

4 Q You didn't try other ice picks.

5 A That is why I said that ice pick could have
6 made those holes.

7 Q Now, can you tell us which holes in Mrs.
8 MacDonald's body, based upon the autopsy report which
9 you said you had and the information that you got from
10 the Government lawyers, which holes in her body ever
11 were made by an ice pick puncturing up to the hilt?

12 MR. BLACKBURN: OBJECTION, Your Honor.

13 THE COURT: OVERRULED.

14 BY MR. SEGAL:

15 Q What is your answer?

16 A I have no idea.

17 Q Were you aware of what the pathologist
18 said as to whether or not any ice pick wound in Mrs.
19 MacDonald's body ever went in up to the hilt?

20 MR. MURTAGH: OBJECTION, Your Honor.

21 THE COURT: OVERRULED.

22 BY MR. SEGAL:

23 Q All right.

24 A I recall reading in the autopsy "deep
25 penetrating." I don't recall reading the length of

#10
ks
5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the thrusts.

Q Did you read, "Most of the ice pick-like wounds were superficial in Mrs. MacDonald's body" in the autopsy report?

A No, sir.

Q Did you ever read that any pathologist had ever measured the depth of any ice pick wounds in Mrs. MacDonald's body?

A I don't recall it, sir.

Q If I were to suggest to you that there is no evidence that any pathologist found any bruising---

MR. BLACKBURN: (Interposing) OBJECTION.

THE COURT: SUSTAINED.

BY MR. SEGAL:

Q Tell us from your notes which of the holes you concluded by the numbers were ones that were made up to the hilt because you measured the diameter of the holes in the pajama top and found that to be equal to the diameter of the widest part of the ice pick.

MR. BLACKBURN: OBJECTION.

THE COURT: SUSTAINED. He answered that.

MR. SEGAL: I'm sorry. I didn't get the numbers of any holes, Your Honor.

THE COURT: I understood the witness

#10
cks

4375

1 to say that he did not know which ones went to what
2 depth. Was that your answer?

3 THE WITNESS: That was correct, sir.

4 BY MR. SEGAL:

5 Q Didn't you make a chart or graph of every
6 single one of these holes as part of the experiment
7 that you conducted?

8 A In 1971, sir, I drew in my notes a replica
9 of the pajama top and the various panels, and I put in
10 my notes a little dot with my pencil the approximate
11 location of the holes. At that time, I also put
12 beside the little dot the number I had assigned to that
13 particular hole on the pajama top.

14 In my general notes, I noted some of the
15 holes were an eighth of an inch in diameter and they
16 appeared to be very deep up to the hilt type holes.
17 I did not point out which ones, and that's the extent
18 of it.

19 Q Did you measure all the holes, that is to
20 say, all the puncture holes in the pajama top?

21 A The large ones I measured.

22 Q May have?

23 A I said, "The large ones I measured."

24 Q The large ones--how many were there
25 categorized by you as large ones?

#1
cks
7

1 A I have no idea at this time. There were
2 several.

3 Q How about in your notes? Would that tell
4 you how many large ones there were?

5 A No, sir; that's what's in my notes. "The
6 holes vary in diameter up to an eighth of an inch."

0
cks
8

7 THE COURT: Now we'll take our
8 morning recess, members of the jury, and we'll come
9 back at 11:30. Don't talk about the case.

10 (The proceeding was recessed at 11:10 a.m.,
11 to reconvene at 11:30 a.m., this same day.)

12
13
14
15
16
17
18
19
20
21
22
23
24
25

4377

FURTHER PROCEEDINGS (11:30 a.m.)

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Did you finish with this witness?

MR. SEGAL: Not quite, Your Honor.

THE COURT: All right, let him come back, then.

(Whereupon,

PAUL M. STOMBAUGH

the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

CROSS - EXAMINATION (11:31 a.m.) (resumed)

BY MR. SEGAL:

Q Mr. Stombaugh, before the break I was talking to you about the puncture wounds and this experiment of lining up the various holes; you recall that, don't you?

A Yes, sir.

Q I gather that you have said that you don't have a record or you never made a record of which holes by number were the larger ones and which holes were the smaller ones?

4378

1 A That is correct.

2 Q Now, when you made this little demonstration
3 here, did you or did you not account for the fact that
4 you might have been pushing a steel rod through a hole
5 which, in fact, was going to come in contact with a place
6 on Mrs. MacDonald's body where the autopsy said she had
7 a very tiny or superficial mark; did you account for
8 that?

9 A Sir, we were just trying to account for the--
10 all 48 holes.

11 Q In view of that answer, I would be correct
12 in stating you did not try to account for the fact that
13 some holes are larger than other holes, but you didn't
14 try to figure that out and try to put these various rods
15 through the fabric and against what you thought were the
16 holes in the body?

17 A No, sir; we lined the--we were only interested
18 in a pattern--accounting for all 48 holes--and a pattern.
19 We came up with a pattern of five holes, which would have
20 been in the right chest, and 16 which would have been in
21 the left chest.

22 Q Now, if we had a situation--and I will do this
23 in rather magnified form so that we can all follow it.
24 Let's assume that we had a situation where the hole in
25 the pajama top was really made only by a weapon like this,

4374

1
p-3

1 but only up to about a half-inch. All right, that
2 would make a relatively small hole, would you say,
3 considering that the width?

4 A Yes.

5 Q If you had a hole like that in the pajama
6 top, and at the same time on the body of Mrs. MacDonald
7 we had a maximum-size hole, such as would be made by an
8 ice pick down to the hilt, right?

9 Now, in lining those things up to make this
10 little demonstration that you have shown us here in this
11 photograph, you made no attempt to account for the fact
12 that a small hole in the surface could not have made a
13 big hole in the body below, isn't that right?

14 A Lining the holes up in underneath, sir, was
15 done by Ms. Green.

16 THE COURT: Is she going to testify in
17 the case?

18 MR. MURTAGH: Yes, sir.

19 THE COURT: Maybe this question would
20 be better directed to her.

21 MR. SEGAL: I appreciate that. I will
22 only very briefly touch on the matter.

23 BY MR. SEGAL:

24 Q I gather that you told you us when you were
25 first questioned about this matter that you were the



438

1 supervisor of this work that Ms. Green did?

2 A That is correct.

3 Q And that you were up in some attic room in
4 the FBI working on this, is that right?

5 A That is correct.

6 Q And you were there all or most of the time
7 she was doing it?

8 A That is correct -- once we got it folded and
9 got the 21 holes located on the top. It is a very time-
10 consuming job. We both worked on it for a while, and
11 then Ms. Green took over; and it took her a very long
12 length of time to see if it could be done.

13 Q To see if just holes could be lined up in
14 various fashion so that 48 holes could be found to
15 equate with 21 holes in some way?

16 A That is correct.

17 Q But my particular question is, as far you
18 know, Ms. Green at no time attempted to resolve the
19 problem of how if you have a small hole in the garment
20 and a large hold in the body underneath as to how you
21 would account for those holes being made in that fashion?

22 MR. BLACKBURN: Your Honor, we would
23 OBJECT.

24 THE COURT: OVERRULED.

25 BY MR. SEGAL:



1
-5
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What is your answer, sir?

A My answer, Mr. Segal, is that we were not trying to line up holes with particular damage to the body itself. We were just trying to determine if the 21--or the 48 holes could have been made by 21 thrusts, and if so what would the pattern be. And we did get a pattern of five holes and 16 holes, and accounted for all 48 holes.

As I say, again, we are not saying this is actually what took place. We made this demonstration to see if it could have taken place.

Q And that is the question I want to ask you, sir. Can you explain to the jury how this could have happened the way you suggest, if you in no way ever accounted for the fact that a small hole on the surface of the garment could not possibly have made a large full-to-the-hilt hole in the body underneath.

How could you possibly be offering this as an explanation of the way it could have happened?

MR. MURTAGH: OBJECTION, Your Honor---

THE COURT: (Interposing) OVERRULED.

BY MR. SEGAL:

Q What is your answer, Mr. Stombaugh?

A It is quite possible, sir, that all the holes on the top were large holes.



4981

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: TUESDAY, AUGUST 14, 1979

PAGES 4984-5243 TRIAL DAY EIGHTEEN

1 wai for the Government to get report back. It
2 seems to me that a day is all that is required.

3 THE COURT: I think they can find out
4 something today.

5 MR. SEGAL: All right, Your Honor.

6 MR. SMITH: Thank you.

7 (Bench conference terminated.)

8 MR. SEGAL: May I file with the
9 clerk my affidavit?

10 THE COURT: You may file it with the
11 clerk, but leave one with me.

12 MR. SEGAL: Yes, Your Honor.

13 THE COURT: You wouldn't want me to
14 go through the whole noon hour with nothing to do;
15 would you?

16 Any further evidence for the Defense?

17 MR. SEGAL: Yes, Your Honor. I call
18 Dr. John Thornton, please. He will be in forthwith,
19 Your Honor. We had expected the other procedure first,
20 but he will be in shortly.

21 THE COURT: All right.

22 (Whereupon,

23 DR. JOHN I. THORNTON

24 was called as a witness, duly sworn, and testified as
25 follows:)

#14
cks
6

1 D I R E C T E X A M I N A T I O N 12:38 p.m.

2
3 BY MR. SEGAL:

4 Q Dr. Thornton, what is your professional
5 occupation, please?

6 A I am employed as an Associate Professor of
7 Forensic Science at the University of California at
8 Berkeley and occasionally as a consultant in matters of
9 physical evidence.

10 Q In one paragraph, can you tell us what
11 forensic science is?

12 A "Forensic" comes from the Latin word
13 meaning "of the forum," and the forum in Rome was a
14 place where debates were held. It was also a court-
15 house, so forensic science is science that is exercised
16 on behalf of the court, on behalf of law, and is
17 intended to assist in the reconciliation of various
18 matters--both criminal and civil.

19 Q What is your education, Dr. Thornton, in
20 regard to the area of forensic science?

21 A I have a Bachelor of Science in
22 Criminalistics from the University of California at
23 Berkeley, a Master of Criminology also in Forensic
24 Science--Criminalistics--from the University of
25 California, and a Doctor of Criminology degree but in

-17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that I testified to in this case.

A I have read several reports that he had written.

Q All right, now, I want to first of all direct your attention to one of the subject matters that was testified to in regard to fabric tears. I want to ask you a question concerning a statement made by Mr. Stombaugh at page 4074 of his testimony given here before this Court on August 7th, 1979. At that time, Mr. Stombaugh was testifying with respect to puncture holes in the blue pajama top in this case and made the following statement, which I will seek your opinion.

"In examining the puncture holes, we noted that there was no tearing. The holes were clean, and it was my conclusion that the holes had been placed into this garment while the garment itself was in a stationary condition."

First of all, have you read that testimony also?

A Yes, I have.

Q Do you agree with that testimony?

A No, I don't believe it is true.

Q What is the basis of your statement that you

5151

7
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

do not believe that testimony is true--that the holes in that garment were made or placed in it while the garment was in a stationary condition?

MR. MURTAGH: I would OBJECT unless there is a proper foundation other than just reading the testimony.

THE COURT: Well, the witness says he disagrees with a conclusion offered and testified to by another expert witness. I suppose the question is, "How come he does?" I will let him say. I would remind counsel and the jury that it is for the jury to determine whether or not testimony of any witness is true. It is not the province of any witness to say that other testimony is true or untrue.

BY MR. SEGAL:

Q Let me put it to you in an additional fashion. Do you agree or disagree with the opinion expressed by Mr. Stombaugh that the puncture holes in the blue pajama top were made while the garment itself was in a stationary condition?

A I disagree that that is the only possible conclusion.

Q Let me ask you: have you ever examined the blue pajama top we have talked about?

A Yes.

17
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q What is the basis, if any, for your statement that you disagree with the statement made by Mr. Stombaugh as I have read it to you?

A I conducted a series of experiments in which I put a target in motion and stabbed at it with an ice pick. I then examined the holes resulting from those punctures and found that the holes were circular in appearance despite the fact that the target was in motion.

Q Let me back up if I can for a second. I neglected to ask you one thing about this statement that Mr. Stombaugh made. Are there any authoritative textbooks or articles or treatises which you know of which support the opinion to be made on the basis that Mr. Stombaugh made his that this garment had to be stationary to have the puncture holes made in the fashion they were made?

A Not to my knowledge. I suppose that there could exist something in the literature that discusses this topic, but not to my knowledge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SEGAL:

Q You are not aware of any authority, text-
book, or treatise which discusses or supports such
a conclusion made without experimentation or
demonstration?

A No.

Q Now, before I get back to the basis of
your opinion, did you examine the holes that were made
in the blue pajama top in some fashion?

A Yes.

Q How did you conduct your examination?

A With the aid of a seven "x" or seven-times
magnifying glass.

Q Did you do any other examination before
you devised the test you described--and I'll come back
to that test very shortly?

A Not to my knowledge.

Q In your opinion, based upon your own
background, education, knowledge, training, and
experience in the field of criminalistics, is it
possible to have arrived or is there a scientific basis
for Mr. Stombaugh to have arrived at the conclusion he
did without conducting some experiments in regard to
tearing or puncturing the fabric?

MR. MURTAGH: OBJECTION.



674
71

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: FRIDAY, AUGUST 24, 1979

PAGES 6747-6903 TRIAL DAY TWENTY-SIX



1751

ml

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FURTHER PROCEEDINGS 9:30 a.m.

THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Friday, August 24, 1979, at Raleigh, North Carolina.

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Good morning, ladies and gentlemen. All right; I believe you had a witness on the stand. Let him come back, please.

(Whereupon,

DR. JEFFREY R. MacDONALD the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

THE COURT: You may cross-examine. Proceed.

CROSS - EXAMINATION 9:31 a.m.

BY MR. BLACKBURN:

Q Dr. MacDonald, late yesterday afternoon, right as we were getting ready to adjourn, Defense

67
68

3 p4

1 Q Do you know where it was ripped?
2 A No.
3 Q Did you rip it?
4 A I may have.
5 Q Did you ever hear any ripping sounds?
6 A No; I do not recall ever hearing a ripping
7 sound.
8 Q Either from the intruders or from you?
9 A That is right.
10 Q How did these holes get in this pajama top?
11 A From the assailants.
12 Q Where was it when it got holes in it from
13 the assailants?
14 A My recollection is that it had to have
15 been around my wrists.
16 Q What were you doing with it?
17 A I was fending off blows--trying to get my
18 hands out.
19 Q You don't know whether it was torn at that
20 time?
21 A I have no idea.
22 Q You don't know whether it was pulled over
23 your head?
24 A I do not.
25 Q Well, I take it, it was either ripped or it



Page 5

6809

1 was pulled over your head to get around your wrists,
2 would you agree with that?

3 A I would agree with that.

4 Q And you see that it is ripped?

5 A Yes, I do.

6 Q I know this pajama top was torn, but just
7 for the sake of partial demonstration, what part of
8 the wrists was it around, if you can say?

9 A Initially it was around my wrists, and
10 then it was involved with my hands and wrists.

11 Q Well, so everyone can see, is this about
12 accurate or would you want to change something?

13 A I have no recollection of it at all.

14 Q But it was around your wrists?

15 A It was around my wrists.

16 Q Had that around your hands as you were
17 trying to get it out?

18 A That is right.

19 Q Well, I want to do a little demonstration
20 with this, and you tell me whether I am doing it right
21 or wrong, as best you can recall?

22 A Right.

23 MR. SEGAL: Your Honor, I really don't
24 understand how we can have a demonstration when there
25 is no factual foundation for it. The witness is unable

1 to give an informative demonstration on it.

2 MR. BLACKBURN: Your Honor, this---

3 THE COURT: (Interposing) I will
4 let him show us what he proposes to do, and if there is
5 objection on it I'll rule.

6 MR. SEGAL: All right.

7 BY MR. BLACKBURN:

8 Q How were you fending off the blows from the
9 intruders when this was on your wrists? Was it like
10 that or like that? Am I right or wrong?

11 A I don't recall.

12 Q But you were using this around your wrists
13 or hands to fend off the blows of the intruders, is that
14 correct?

15 A That's correct.

16 Q Was it between your hands?

17 A Part of it must have been between my hands
18 because my hands were not touching each other.

19 Q And all 48 puncture holes got in here, in this
20 pajama top, at that time?

21 A That's what I would have to presume, yes.

22 Q Can you tell us why those are circular,
23 round holes and not tearing holes?

24 A Can I tell you that?

25 Q Yes, sir.

#8 p7

677
68

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A I was fending off blows that were coming straight at me, and I was pushing out against them. I see no reason why the fabric should be torn and not have circular holes.

It was not at all like the demonstration that you showed the jury.

~~6710~~
681

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BLACKBURN:

Q Well, that being the case, assume for a moment that this is around your wrists, and assume for the moment that I am an intruder. Was I overhanded or was I underhanded or was I sideways--or what was I doing?

A I would have to say that the blows were coming at me straight and I was almost in a sitting position, so I would have to--my assumption has always been that they were waist-high, just like you are doing now.

Q Like that (indicating)?

A That's right.

Q And I would have done like that (indicating)?

A That is what I remember--fending off blows like that, which I initially thought were punches.

Q Well, did you ever, if you can recall, during this time, move the pajama top to the right or the left?

A Did I ever during the struggle?

Q Yes?

A I'm sure I did. I had hold of a shirt one time. I had hold of a hand. There was movement during the struggle. I am sure it had moved. I did not hold this stationary.

Q That is what I am getting at. In other words, the whole time you had the pajama top around your wrists and somebody was stabbing at you, it was not just



671
181

1 straight on.

2 A No; but my recollection is that the majority
3 of my movement was out against that.

4 Q Was all of your movement out against it?

5 A I do not recall.

6 Q I take it, Dr. MacDonald, that when this was
7 taking place and this was between your hands as you have
8 just testified, was it next to your chest or was that
9 away from your chest?

10 A I think for the most part it was away from my
11 chest.

12 Q Like so (indicating)?

13 A Yeah; I was using it more or less as a
14 shield, and trying to pull my hands out and push away at
15 the same time.

16 Q Am I correct in saying, then, that during
17 part of the struggle with the intruders--when they were
18 striking at you and you had this around your wrists--that
19 it was not at all times supported by your body or some
20 body weight?

21 A That is correct.

22 Q Now, when the two white males were at the end
23 of the sofa, do you know whether both of them had weapons
24 or just one of them?

25 A I do not know.



683'

2kml

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BLACKBURN:

Q You don't know how long you were unconscious, do you?

A No.

Q When you woke up and went into the master bedroom to see Colette, what lights were on?

A I do not recall.

Q Well, by the time you got to the master bedroom, did you turn the light on or off, or do you recall?

A I do not recall.

Q What did you do when you went in there?

A I took the pajama top off--I took the pajama top off my wrists--hands--took the knife out of Colette.

Q Where did you put the pajama top?

A I do not recall.

Q The first time that you were in the master bedroom, did you put the blue pajama top on the chest of Colette?

A You mean, at any time during the first visit to the master bedroom?

Q Yes.

A I could have.

Q You could have?

A My best recollection is I probably did.

Q Well, yesterday--and you can correct me if I