

ORAL ARGUMENT IS REQUESTED

Nos. 05-6406 and 06-6011

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

ESTATE OF KENNETH MICHAEL TRENTADUE, et al.,

Plaintiffs-Appellees/Cross-Appellants,
v.

UNITED STATES OF AMERICA, et al.,

Defendants-Appellants/Cross-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA,
THE HONORABLE TIM LEONARD

APPENDIX
[Volume V of XII, pp. 1437-1889]

PETER D. KEISLER
Assistant Attorney General

ROBERT G. McCAMPBELL
United States Attorney

ROBERT S. GREENSPAN
(202) 514-5428
MICHAEL E. ROBINSON
(202) 514-1371
*Attorneys, Appellate Staff
Civil Division, Room 7539
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001*

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 THE COURT: Mr. Groover, you may be excused, and
2 the Court would advise you that you are not to discuss the
3 testimony you have given here today with other persons who
4 may be a witness in this matter.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You may be excused.

7 (WITNESS EXCUSED.)

8 THE COURT: Plaintiffs call their next witness.

9 MR. SAMPSON: Douglas Perkins.

10 THE COURT: You may proceed, Mr. Sampson.

11 DOUGLAS PERKINS,

12 having been first duly sworn to tell the truth, the whole
13 truth, and nothing but the truth, testified as follows:

14 D I R E C T E X A M I N A T I O N

15 Q. (BY MR. SAMPSON) Would you state your name?

16 A. First initial J. Douglas Perkins.

17 Q. Who do you work for?

18 A. The Oklahoma State Bureau of Investigation.

19 Q. What is your present position?

20 A. Criminalist supervisor of the Trace Evidence Section.

21 Q. How many people do you supervise?

22 A. At this time two.

23 Q. You say it's the "Trace Evidence Section?"

24 A. Yes, sir.

25 Q. What is "trace evidence?"

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 A. Trace evidence is usually items that are too small to be
2 seen with the eye or very minute amounts of residues,
3 dealing with the fields of ignitable liquids such as in
4 arson cases, gunshot residue such as in firearms cases,
5 paints, soils, glass, fibers, hairs, item that are normally
6 categorized within the trace evidence.

7 Q. That includes fracture analysis of fabric?

8 A. Yes, sir, it also includes the fracture analysis portion
9 or what is also referred to as puzzle fit.

10 Q. How long have you worked for the Oklahoma State Bureau
11 of Investigation?

12 A. Nearly 19 years.

13 Q. What is your educational background?

14 A. I have a bachelor of science degree with a major in
15 biology and a minor in chemistry that I received from
16 Cameron University in Lawton, Oklahoma in 1978. Since then,
17 I have also gone to many numerous courses after my formal
18 education classes through the Federal Bureau of
19 Investigation, the Bureau of Alcohol, Tobacco, and Firearms,
20 and other agencies.

21 Q. Have you taught courses in trace analysis?

22 A. Yes, I do teach collection preservation of evidence and
23 other reconstructive techniques used at crime scenes.

24 Q. Mr. Perkins, did there come a time when you were asked
25 to perform some work on the Kenneth Michael Trentadue

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 matter?

2 A. Yes, sir.

3 Q. When was that?

4 A. May I pull out my file?

5 Q. You bet.

6 A. In March 17th of 1998 was when the first items were
7 received by my laboratory.

8 Q. What items were received?

9 A. At that time a paper sack labeled "ligature." A paper
10 sack labeled "portion of sheet suspended from the vent to
11 the cell."

12 Q. What did you understand the paper sack labeled
13 "ligature" contained?

14 A. It contained materials that were submitted to me through
15 the Medical Examiner's Office originally.

16 Q. Did you understand those materials to be the part of the
17 sheet that was around Mr. Trentadue's neck?

18 A. Yes, sir.

19 Q. Did you receive additional materials later?

20 A. Yes, sir, March 30, 1998, I received a sealed paper sack
21 containing a file folder that contained a flat bed sheet.
22 Also -- excuse me -- at a different date I received item
23 number W4.

24 Q. What is that?

25 A. The item that was received March 17th of 98 was a paper

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 sack that contained three sheets that were collected from
2 the facility itself, three used and laundered bed sheets to
3 be used as exemplars in this case.

4 Q. Now, we are going to be talking about some numbers and
5 letters that start with W, and I think there is a W1 and
6 W2. Would you explain to the jury and the Court how you
7 labeled the package containing the noose that was around Mr.
8 Trentadue's neck and the package that was containing the
9 materials that were hanging from the vent?

10 A. The letter W is assigned to my section. Anytime within
11 my agency they see a W, they know that the number originated
12 through the Trace Evidence Section. Each section has its
13 own alpha character, so we do not give the same piece of
14 evidence two or three different designations. So when
15 evidence comes in on case, it's given a master case number.
16 And in this case, the master case number 98-3577. Any
17 evidence dealing with this case will have that same number
18 attached to it. The items that come into the different
19 sections when I receive the paper sack, it had not yet been
20 analyzed by anyone within the OSBI. I then gave that paper
21 sack the designation W1. Anything contained within that
22 sack gets that W1 designation with a dash 1, dash 2, and a
23 dash 3 behind it.

24 So if there are items within that sack and in this one
25 there were three, one item received a designation of W1-1, a

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 W1-2, and a W1-3, meaning those items came from the sack
2 originally labeled as W1.

3 Q. And W1 was the noose around Mr. Trentadue's neck?

4 A. That was the paper sack listed as "ligature."

5 MR. SAMPSON: May I approach the witness, Your
6 Honor?

7 THE COURT: You may approach.

8 Q. (BY MR. SAMPSON) Would you like a pair of gloves?

9 A. Yes, please.

10 Q. Mr. Perkins, I have handed you two paper envelopes. The
11 one you are picking up right now is Exhibit 543D.

12 MR. SAMPSON: And Your Honor, I would offer that.
13 It's a Defendant's exhibit, and there has been no objection
14 to it at this time.

15 THE COURT: It is what?

16 MR. HANDLER: No objection, Your Honor.

17 THE COURT: Defendant's what?

18 MR. SAMPSON: 543D.

19 THE COURT: All right, that will be admitted.

20 Q. (BY MR. SAMPSON) Mr. Perkins, can you identify 543D?

21 A. Within the envelope that's labeled 543D as in David,
22 there is a paper sack that bears my case number 98-3577. It
23 also bears the designation W1, my initials JDP, and the date
24 of March 19, 1998. Also upon the outer part of the
25 container is OSBI evidence control number which is CB as in

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 Charles boy 5640, so this items is the W1 that I originally
2 analyzed.

3 Q. You also have in front of you, Mr. Perkins, a copy of
4 your report that has been marked as an exhibit. Do you see
5 that in front of you?

6 A. Yes, sir.

7 Q. What's the Exhibit number on that?

8 A. The Exhibit number is 492, State's Exhibit 5.

9 MR. SAMPSON: Your Honor, I would offer Plaintiffs'
10 Exhibit No. 495, which is the witness report.

11 MR. HANDLER: No objection, Your Honor.

12 THE COURT: Exhibit No. 492 will be admitted
13 without objection.

14 Q. (BY MR. SAMPSON) Mr. Perkins, referring to 543D which
15 contains your numbers W1-1, W1-2, and W1-3, again, that is
16 the portion from the medical examiner's office that was
17 around Mr. Trentadue's neck; correct?

18 A. That is my understanding, yes.

19 Q. Did you analyze -- how many pieces are in that envelope?

20 A. There are three items contained within the plastic bag
21 contained within the sack that was contained within the
22 envelope.

23 Q. Did you analyze those three pieces of fabric for
24 fractures?

25 A. Yes, sir, I was act if I could effect any fracture

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 matches between what was contained in W1 item to what else
2 is within the case.

3 Q. Do you recall -- I am putting up now Exhibit No. 492
4 which is your report, and do you see the W1 items listed in
5 the report; do you see that?

6 A. Yes, sir.

7 Q. Your analysis of the W1-1, W1-2, and W1-3 which came
8 from the Medical Examiner's Office disclosed what concerning
9 the composition of the edges of each of those pieces of
10 fabric?

11 A. The edges concerning item W1-1?

12 Q. Yes, sir.

13 A. There were two factory edges on that strip of material.

14 Q. What is a factory edge?

15 A. An original woven seam edge or a hem that was produced
16 by the manufacturer of the fabric.

17 Q. Which edges were the factory edges on W1-1?

18 A. One of the long edges and one of short edges.

19 Q. And W1-1 in your report you describe the size of the
20 object; correct?

21 A. Yes, sir.

22 Q. What were the other two edges?

23 A. The edge the remaining long edge was a tear type of
24 edge, and the other opposing short end was a stress
25 fracture.

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 Q. What is a difference between a tear and stress fracture?

2 A. A tear is when fabric is grabbed and pulled and
3 separates a part, and you can tell by the way the fibers
4 separate from the matrix, the original material, the fabric,
5 that it's a tear. It's a nice, even, smooth motion.
6 Whereas with a stress fracture, the fabric is pulled through
7 tensile forces until it breaks a part and that leaves a
8 jagged edge.

9 Q. So with respect to W1-1, you found no cut edges?

10 A. No, sir.

11 Q. What about W1-2? Mr. Perkins, did you find any cut
12 edges on W1-1?

13 A. No, I did not.

14 Q. W1-2, would you describe the edges of W1-2?

15 A. W1-2, it was a long piece of fabric. Both long sides of
16 it were torn. The short ends, the short edges, excuse me,
17 it was -- I could not tell if it was a tear or a stress
18 fracture.

19 Q. Did you find any cut edges on W1-2?

20 A. No, I did not.

21 Q. What about W1-3?

22 A. W1-3, the long side that has the tag attached to it is a
23 factory edge. One of the short edges is a factory edge --
24 excuse me -- the side with the tag was a tear, excuse me.
25 The factory edge is on the other side on the long edge, and

DIRECT EXAMINATION OF DOUGLAS PERKINS

- 1 then there is a stress fracture on the remaining short edge.
- 2 Q. So did you find any cuts on W1-3?
- 3 A. I did not.
- 4 Q. W1-1, W1-2, and W1-3 comprise the portion of the sheet
- 5 contraption that was around Mr. Trentadue's neck; correct?
- 6 A. Those three items were what I received labeled as a
- 7 ligature, yes.
- 8 Q. And you found no cuts on any of those items?
- 9 A. No, sir.
- 10 Q. Mr. Perkins, do you have a pen with you?
- 11 A. An ink pen, yes, I do.
- 12 Q. Would you write next to the copy of your report on W1-1,
- 13 W1-2, and W1-3, no cuts.
- 14 A. On the copy?
- 15 Q. On the exhibit, yes, sir.
- 16 A. (Witness complies.)
- 17 Q. Next, there is a group of materials labeled W2-1 through
- 18 W2-8 in your report.
- 19 A. Yes, sir.
- 20 Q. What did you understand those items to comprise?
- 21 A. That portion of the sheet that was labeled as suspended
- 22 from the vent in the cell.
- 23 Q. I won't ask you about each of those items specifically,
- 24 but I will ask you about them as a group. Did you find any
- 25 cuts through and through cuts on any of those pieces of

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 material?

2 A. On W2-1, one of the short edges was partially sheared
3 and torn.

4 Q. How much of the short edge was sheared?

5 A. The fabric was approximately four inches wide and about
6 half of that was a scissor-type cut. When I say scissor, I
7 mean a sharp-edged instrument. It could have been a knife.
8 It could have been a razor blade, something that is sharp.

9 But the edge shows that half of it was a sharp
10 instrument cut and the remaining was a tear.

11 Q. Did the sharp instrument cut go through a seamed edge?

12 A. No, sir, it was going through a tear edge.

13 Q. Did you find any other cuts?

14 A. There were no cuts on item W2-2. On item W2-3, there
15 was again on the short edge about one-third of the edge was
16 scissor or sharp-edged instrument, and then the remaining
17 two-thirds was approximately a tear. And the width of the
18 fabric on that is four and an eighth inches.

19 Q. Did you find any other cuts in any of those materials
20 that were hanging from the vent?

21 A. The remaining items all contained tears or factory edges
22 or those type of no sharp instrument cuts.

23 Q. Mr. Perkins, with respect to the two partially cut edges
24 on the portion that was hanging from the vent, did you
25 attempt to match those together to see if they were at one

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 time were one piece?

2 A. Those items came from the same item number W2, I did not
3 try to hook them directly to each other.

4 Q. You didn't check to see if they matched?

5 A. No, I did not.

6 Q. I would like to refer you to your report, and it's the
7 analysis of evidence portion of the report in which you
8 described. It starts on the bottom of page 2 and continues
9 over to page 3. Your analysis was to see if you could match
10 edges; correct?

11 A. That is correct.

12 Q. How many edges were matched, did you achieve a match of
13 all of the materials that you found?

14 A. I was able to effect a fracture match or a puzzle fit on
15 two strips of cloth to each other.

16 Q. Any others?

17 A. No, sir.

18 Q. And none of the cut edges could you effect a match to
19 each other?

20 A. No, sir.

21 Q. Mr. Perkins, did you attempt to -- did you effect a
22 match of one cut edge to another cut edge?

23 MR. HANDLER: Objection; asked and answered.

24 THE COURT: Be overruled.

25 Q. (BY MR. SAMPSON) You may answer.

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 A. Please repeat the question.

2 Q. Did you effect a match from one cut edge from the part
3 that was hanging from the vent to another cut edge that was
4 hanging from the vent?

5 A. No, sir, the item W1-1 which I effected a fracture match
6 to item number W2-4, W1-1 contains no cuts to it. It
7 contains tears and stress fractures and factory edges. And
8 W2-4, that item contains two stress fractures at the short
9 ends, one factory edge, and one torn edge.

10 Q. Mr. Perkins, did you attempt to see if there was enough
11 material that comprised W1-1 which was the part around the
12 neck and W2-1 or all those pieces that were hanging from the
13 vent to see if they added up to a whole sheet?

14 A. I was asked if I could reconstruct the materials from
15 the cell what was given to me from the vent, from around the
16 person's neck, and the remaining portion of the sheet that
17 was in the cell to see if it was an entire sheet. I could
18 not -- the pieces I have indicates that I do not have the
19 entire sheet.

20 Q. Mr. Perkins, before I finish, would you flip back to the
21 first page of the exhibit of your report of Exhibit No. 492
22 and just to clarify that report under W-1, would you put
23 around neck, write that on your report.

24 MR. SAMPSON: May I approach, Your Honor?

25 THE COURT: You may approach.

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 THE WITNESS: Is that satisfactory what I wrote on
2 there?

3 Q. (BY MR. SAMPSON) No cuts, around neck, okay. Let me
4 show it to the jury so they can see what you have done. And
5 as we refer to W1 off the left-hand side, you have written
6 "no cuts" and initialed it and dated it; correct?

7 A. That is correct.

8 Q. At the top of W1 you put "around neck."

9 A. That is correct.

10 Q. And on W2 that is one sealed paper sack labeled portion
11 of sheet suspended from vent and that is Exhibit 543E. Do
12 you see an exhibit number on that? It may be somewhere in
13 there.

14 A. On the outer plastic there is a Defendants' Exhibit No.
15 543E as in Edward.

16 Q. 543E contains nine pieces that were found hanging from
17 the vent.

18 MR. HANDLER: Objection; misrepresents prior
19 testimony.

20 Q. (BY MR. SAMPSON) What does 543E consist of, Mr. Perkins?

21 A. 543E contains the original white paper that the other
22 strips of fabric were in. These items bear my initials, the
23 date of April 24, 1998, and has W numbers the W2-4. There
24 is a W1-1 here. Those are the two pieces that were effected
25 to each other as a fracture match, and the additional items

DIRECT EXAMINATION OF DOUGLAS PERKINS

1 associated with W2.

2 Q. What does it say on the outside of that envelope 543.

3 There is handwriting on the back side?

4 A. On this it says -- this is in my writing, "portion of
5 sheet suspended from the vent in cell" with my initials JDP,
6 March 17, 1998, contains the OSBI evidence control number
7 CB-5639.

8 Q. One last question, Mr. Perkins, you found no cut of any
9 portion of any material that was around Mr. Trentadue's
10 neck; is that correct?

11 A. On items W1-1, W1-2, W1-3, I found no cuts.

12 Q. Mr. Perkins, on your report there are a couple place
13 where is the materials that were hanging from the vent as
14 you examined them have been described as noose. The first
15 one appears at page 2 under the bottom under analysis, you
16 refer to W1-1 as ligature, which I understood to be the
17 noose or understand to be the noose, and W2-4 which I
18 understand are the materials to be hanging from the vent; is
19 that correct?

20 A. W 1-1, the ligature was from the person's neck. W2-4
21 which was labeled as noose by the officers was really the
22 portion that was hanging from the vent of the cell.

23 Q. Would your report be more accurate if you corrected the
24 word noose to be hanging from vent on page 2?

25 A. I could do that.

REDIRECT EXAMINATION OF DOUGLAS PERKINS

1 Q. (BY MR. ADAMS) Mr. Perkins, you just answered a couple
2 questions about cutting and tearing how you would expect the
3 cut to be in piece of fabric, then a tear. You would expect
4 those two pieces to match, wouldn't you?

5 A. You are talking about these two physically to match to
6 each other?

7 Q. Yes.

8 A. Once they were parted, if I were given those two pieces
9 back, I would expect to make a fracture match back to them.

10 Q. And you did not match the two partially torn and cut
11 pieces that were hanging from the vent, did you?

12 A. No, I did not.

13 Q. You did try?

14 A. I did try, but I could not effect a fracture match.

15 Q. You talked about Detective Scott from the Oklahoma City
16 Police Department bringing you the materials and you
17 reporting to him what your conclusions were; do you recall
18 that?

19 A. Yes, sir.

20 Q. Did you give Officer Scott a copy of your report?

21 A. Yes, sir.

22 Q. Did you tell Officer Scott about your findings
23 concerning the edges of W1-1 which were around Mr.
24 Trentadue's neck?

25 A. As to?

REDIRECT EXAMINATION OF DOUGLAS PERKINS

1 Q. The fact that there were no cuts?

2 A. That was not listed in my report, but I do know that I
3 presented my notes to them for them to look at and showed
4 them the photographs of all the items so that they could see
5 what I had looked at.

6 Q. Did you present those findings to Mr. Bevel that there
7 were no cuts on the portion that were around Mr. Trentadue's
8 neck?

9 A. I do not remember.

10 Q. Was there a reason that your findings concerning the
11 cuts or the lack of cuts in the portion and Mr. Trentadue's
12 neck was not listed in your report?

13 A. Could you repeat the question, please?

14 Q. Yes, that was a poor question. I apologize. Is there a
15 reason why you didn't identify the edges of W1-1 which
16 comprised the part around Mr. Trentadue's neck as not having
17 any cut edges?

18 A. No, I just listed the fact that they were a fracture
19 match that they could be put back together.

20 Q. And you matched no pieces other than the stress fracture
21 that you talked about that is up on the board right now, you
22 matched no cut pieces from the part around Mr. Trentadue's
23 neck to the part up above?

24 A. No, I did not.

25 Q. And that includes partial cuts?



OKLAHOMA STATE BUREAU OF INVESTIGATION

2132 N.E. 36th Street
Oklahoma City, OK 73111
(405) 427-5421



CRIMINALISTICS EXAMINATION REPORT

LAB NO.:	98-3577	Reported To:	District Attorney
		Address:	Oklahoma County Courthouse 320 Robert S. Kerr OKC, OK 73102
Date Received:	SEE BELOW	Submitted By:	SEE BELOW
Date Reported:	06-19-98		
Classification of Case:	Unknown Death		

Suspect(s):	Victim(s):	Kenneth Michael TRENTADUE, (aka: Vance Paul BROCKWAY) WM, 12-19-50
-------------	------------	--

Description of Evidence:

The following items were submitted to the OSBI Oklahoma City Regional Laboratory by Randy Scott, Oklahoma City Police Department on 03-17-98.

- AROUND NECK* *OP n/ko*
- W1 One (1) sealed papersack labeled "ligature" containing one (1) plastic baggie containing:
- W1-1 One (1) strip of bedsheet material measuring approximately 1 1/8 inches wide and 45 inches long.
 - W1-2 One (1) strip of bedsheet material measuring approximately 1 3/8 inches wide and 46 1/2 inches long.
 - W1-3 One (1) strip of bedsheet material measuring approximately 1 1/8 inches wide and 35 1/2 inches long.
- W2 One (1) sealed papersack labeled "Portion of sheet suspended from vent in cell" containing:
- W2-1 One (1) strip of bedsheet material measuring approximately 4 inches wide and 21 1/2 inches long.
 - W2-2 One (1) strip of bedsheet material measuring approximately 1 3/8 inches wide and 19 1/2 inches long.
 - W2-3 One (1) strip of bedsheet material measuring approximately 4 1/8 inches wide and 21 inches long.
 - W2-4 One (1) strip of bedsheet material measuring approximately 1 1/8 inches wide and 33 inches long.
 - W2-5 One (1) strip of bedsheet material measuring approximately 1 1/4 inches wide and 13 inches long.
 - W2-6 One (1) strip of bedsheet material measuring approximately 1 1/8 inches wide and 33 inches long.

Continued on Page 2

