

FILED

JAN 22 2020

*Eva Carabot Weinstein*  
CIRCUIT CLERK

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS

v.

GENERAL NO. 09 CF 926

MARNI YANG

**PEOPLE'S MOTION FOR DISCOVERY – DNA TESTING OF SWABS TAKEN  
OF BULLETS TESTED BY DEFENSE LABORATORY**

Now comes Michael G. Nerheim States Attorney Lake County Illinois, by and through his assistant Jason R. Humke and hereby requests that the court allow the Northeastern Illinois Regional Crime Laboratory test the swabs taken of the bullets tested by the laboratory retained by the Petitioner/Defendant, and in support of said motion states as follows:

1. At the Petitioner/Defendant's trial, the People admitted "People's Exhibit 66-70," which were unfired bullets recovered from the crime scene.
2. On September 11, 2014, pursuant to a defense motion for DNA testing, the court allowed the release of these exhibits to defense investigators to be examined for DNA by Independent Forensics DNA Testing and Technologies. (See Attached Exhibit 1)
3. In paragraph 3 of the court's September 11, 2014 order allowing this testing, the court specified that the defense would not conduct consumptive testing of any samples collected without a court order to do so. No subsequent order was issued by the court authorizing such consumptive testing. (See Attached Exhibit 1)

4. In paragraph 4 of the court's order, the court directed that Independent Forensics prepare reports of their testing and provide copies of their testing reports to both the defense and the State Attorney's office. (See Attached Exhibit 1).
5. To date, the People have never received any report from Independent Forensics regarding any testing conducted in this case. The first time the People were made aware of the results of any of the testing conducted by Independent Forensics was when their reports were included as exhibits to the Petitioner/Defendant's post-conviction petition filed October 1, 2009.
6. Enclosed as Exhibit 3 of Petitioner/Defendant's post-conviction petition is a lab report from Independent Forensics dated December 4, 2018. This lab report concerns the testing conducted by Independent Forensics of the bullets (See Attached Exhibit 4).
7. According to this report, Independent Forensics examined the bullets for the presence of touch DNA. This was presumably done by swabbing bullets with a sterile Q-Tip, and then taking a cutting from this Q-Tip to be analyzed for the presence of DNA.
8. As the report indicates, male DNA was found on the bullets. The lab determined that the DNA found on the bullets was inconsistent with the known DNA standard for Defendant.
9. The People believe this "male DNA" found on the bullets was the result of the items being handled by the firearm expert who testified at the Defendant's trial. As the court is aware, these bullets were subjected to firearms testing by the Northeastern Illinois Regional Crime Laboratory. Prior to being subjected to firearms testing, the

bullets were swabbed for DNA by the Northeastern Illinois Regional Crime Laboratory, to preserve any DNA that would have been found on those items prior to firearms testing. The lab tested these swabs, but was unable to obtain sufficient DNA to conduct any DNA analysis. Those swabs were retained in evidence as RFB 7-01.1 thru RFB 10-01.1. All of this information was contained in lab reports from NIRCL that were tendered to the defense way back in October, of 2010.

10. As the court is aware, firearms/bullet testing is not conducted in a sterile environment, so DNA from the examiner would likely exist on those bullets. Additionally, as the court is aware, while testifying in court, the examiner held up for the jury the rounds that were tested.
11. Since obtaining the defense lab report, the People have obtained a DNA standard from the firearm expert who handled the bullets. The People request to conduct comparative DNA analysis of a cutting from the swab the defense lab took of the bullets to determine if it matches the known standard of the firearm expert's DNA.
12. Additional DNA testing conducted by the Northeastern Illinois Regional Crime Laboratory would be done using the same process described above. The lab would take a cutting from the Q-Tip swabs taken of the bullets by Independent Forensics and analyze the cutting for the presence for DNA. NIRCL can not simply compare the results from the known DNA standard of the firearms expert to another lab's data and offer a scientific opinion as to whether it matches. The lab requires the swab of the DNA the defense lab tested.

13. Since Independent Forensics was not authorized by the court to conduct any destructive/consumptive testing on this swab, the swab will still be available for testing.

14. Finally, the People are concerned that defense counsel directed their lab to ignore the court's September 11, 2014 order prohibiting consumptive testing. In the Rule 417 Discovery tendered by the defense, exists an email chain between the director of the lab and defense counsel. (See Attached Exhibits 2 and 3). In Attached Exhibit 2 the lab director recognizes that the order bars consumptive testing. In Attached Exhibit 3, defense counsel appears to interpret the court's order to allow the lab to consume the swab for their testing, stating that the bullets can simply be re-tested.

15. As the court is aware, when an item is swabbed for touch DNA, DNA is physically removed from the item. The evidence then becomes the swab. A cutting of the swab is used in order to preserve the DNA for comparative testing. Using the entire swab is exactly what consumptive testing is.

16. Therefore the People request that the court order the defense to preserve any swabs or extracts still retained by the defense lab until further order. The People also request that the court grant the People's Discovery request.

WHEREFORE, the People respectfully request that the court People's Discovery request..

Respectfully submitted,  
MICHAEL G. NERHEIM  
LAKE COUNTY STATE'S ATTORNEY

By:



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JASON R. HUMKE

Assistant State's Attorney

IN THE CIRCUIT COURT OF THE NINETEETH JUDICIAL CIRCUIT  
 LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
                   *Respondent-Plaintiff,* )  
 )  
                   v. )  
 )  
 MARNI YANG )  
 )  
                   *Petitioner-Defendant.* )

**CASE #**  
 29683 *js*

No. 09 CF 926

Honorable Christopher Stride  
 Judge Presiding

**FILED**

ORDER

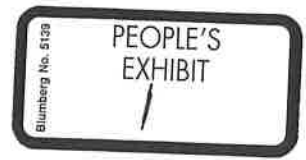
SEP 11 2014

*Keith Bin*  
 CIRCUIT CLERK

On motion of Jed Stone for Marni Yang;  
 People by Ari Fisz, Assistant State's Attorney;  
 The being fully advised in the premises;  
 IT IS ORDERED:

1. The Court finds that DNA testing of the shell casing found at the crime scene and currently in the possession of the Clerk of the Court would not be cumulative. Testing of said shell casings shall be conducted at defense expense and by the agreement of the prosecution.
2. John Rea, a defense investigator, shall transport all shell casings in the possession and control of the Clerk of the Court and found at the crime scene of this cause to Dr. K.A. Reich, Independent Forensics, DNA Testing and Technologies, 500 Waters Edge, Suite 210, Lombard, IL 60148 at ambient temperature for DNA testing.
3. If in order to obtain interpretable DNA test results the scientists at Independent Forensics determine that testing would require consumption of the entire sample Independent Forensics is then required, prior to any testing, to consult with the Lake County State's Attorney's office and Ari Fisz to determine the proper scientific procedure to follow with regard to the consumptive testing of any sample and then to come back to this court for further instruction or order(s).

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4. Dr. Reich and Independent Forensics shall prepare a written report of testing results and provide the defense counsel and state's attorney with copies of same within 21 days of completing said testing.
5. At the conclusion of testing by Independent Forensics all shell casings shall be returned to the Clerk of the Court by John Rea.

**CASE #**

29683 *LR*

ENTER:

*Christopher R. Stride*

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JUDGE

Dated this 11<sup>th</sup> day  
of September, 2014  
at Waukegan, IL

Order prepared by  
Jed Stone  
Stone & Associates, Ltd.  
415 Washington Street  
Waukegan, IL 60085  
847 336 7888

*LR*

**Liz Kopitke**

---

**From:** Karl Reich  
**Sent:** Thursday, July 09, 2015 4:51 PM  
**To:** Jed Stone  
**Cc:** Pravat Boonlayangoor; Liz Kopitke  
**Subject:** Request for information

**Importance:** High

Dear Mr. Stone,

The technique we have developed specifically for items of evidence like spent round cartridges, our specific method for 'touch DNA' is now on-line, validated, competency tested and in use.

The evidence, 7 cartridges, are in the queue for testing; i.e., we would like to unseal them and get started.

Some questions:

- 1) Are all the cartridges considered the same in terms of evidentiary value? i.e., are some items more important/potentially informative than others? do we swab all of the cartridges together, or individually? Keep in mind that there is likely very little material on each individual cartridge – it can be done and we have experimental data showing that single cartridges can have sufficient DNA, if unfired. Fired cartridges, will have less viable DNA. At this point, unless case details contradict, we would suggest a group collection.
- 2) The court order demands certain communication if we feel that sample consumption is required – this can mean many things – do you think that this refers to DNA extracts that we make? to swabs that we take from the cartridges? (these are usually considered work product) Technically no one will know if extract consumption would be required until the data from the DNA quantification step is available; we will consume the swab used to collect biological material from the metal cartridge as part of the procedure.
- 3) At some point a discussion about the previous handling and history of the cartridges is going to be important – some of the items arrived unsealed, all of them with court exhibit tags. This is in regards to whatever DNA profile results are obtained – we do not need an answer to this now, but it will come up if we obtain DNA profile data.

That should get us started. I do have to both apologize and explain the timing. We have taken pains, time, and effort to develop the procedure and importantly develop the documentation and background so that this method will withstand scrutiny and examination in court. This has taken more time than we wanted, but the foundation is now solid.

Please contact me at your convenience by e-mail, phone, fax, etc.

Regards,

Karl Reich

\*\*\*\*\*

Karl Reich, Ph.D.  
CSO  
Independent Forensics  
500 Waters Edge  
Suite 210

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**Liz Kopitke**

**From:** Karl Reich  
**Sent:** Thursday, July 30, 2015 1:43 PM  
**To:** Liz Kopitke  
**Cc:** Pravat Boonlayangoor  
**Subject:** FW: Response to your July 9th email

**CASE #**

29683

Some answers . . . just when you thought you were out of the woods . . .

Karl

\*\*\*\*\*

Karl Reich, Ph.D.  
 CSO  
 Independent Forensics  
 500 Waters Edge  
 Suite 210  
 Lombard IL 60148  
 (p) (1) 708.234.1200  
 (f) (1) 708.978.5115  
 (e) karl@ifi-test.com  
 www.ifi-test.com

\*\*\*\*\*

**From:** Jed Stone [mailto:jstone@jedstone.com]  
**Sent:** Wednesday, July 29, 2015 11:38 AM  
**To:** Karl Reich <karl@ifi-test.com>  
**Subject:** Response to your July 9th email

Karl, thank you for your thoughtful email of July 9.

1. All of the cartridges are considered equal in evidentiary value. Any DNA on the cartridges that may lead to the identification of the shooter would be helpful. Our theory is that a person, not Marni Yang, fired the gun that killed . . . At trial there was no scientific evidence that linked Ms. Yang to the shooting. Fingerprints were found at the crime scene. None were Marni's. No trace evidence was found on her, her clothing or the car she drove. The cartridges were taken into evidence by the police but never tested. If DNA evidence could be developed on these cartridges, it might help us advance our case of innocence.
2. If you extract DNA from a cartridge I expect it will be in very small amounts. I would consider your swabs to be "work product." If you consume the swab you are consistent with the court's order so long as the cartridge remains available to the state for additional testing.
3. I understand that should you be successful in extracting DNA material from the cartridges, and should be successful in obtaining a profile from the extracted DNA we may have additional work to do to obtain a profile from the extracted DNA. For now, should you extract DNA, it would be helpful to say a) it ain't Marni's and b) it may be run thru a data base to determine from whom it came.

Hope this helps. I look forward to your test results. I will be out of the country from Aug. 4 to 18. Hope to come home to news from your lab.

Jed

**CASE #**

29683

**STONE**  
**& ASSOCIATES**

Jed Stone, Attorney at Law  
415 Washington Street, Suite 107  
Waukegan, IL 60085  
p-847.336.7888 f- 847-336-0733

Blumberg No. 5189  
PEOPLE'S  
EXHIBIT  
3

**CASE #**

29683 *JK*

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*12*



**TEST REPORT**

*For results of related casework, see case NL-29683 reports issued on 02/18/2016 and 12/04/2018.*

Jed Stone  
Stone & Associates, Ltd.  
415 Washington St.  
Waukegan, IL 60085

December 4, 2018

Re: People v. Marni Yang #09 CF 926  
Lake County Sheriff's Office Case # 07-15329  
Deerfield Police Department Case # 07-10980  
IFI Lab Case # NL-35624

**Request:** Genetic Identification testing

**Received:** Via hand delivery by Perry Myers;  
Arrived at Independent Forensics on 05/17/2018;  
Twenty items as follows:

- Exhibit # 1: LCSO Item #JY005; People's Exhibit # 66; 9mm live round  
(35624-102771-Q1)
- Exhibit # 2: LCSO Item #JY008; People's Exhibit # 67; 9mm live round  
(35624-102771-Q1)
- Exhibit # 3: LCSO Item #JY010; People's Exhibit # 68; 9mm live round  
(35624-102771-Q1)
- Exhibit # 4: LCSO Item #JY018; People's Exhibit # 69; evidence item missing
- Exhibit # 5: LCSO Item #JY019; People's Exhibit # 70; 9mm live round  
(35624-102773-Q2)

**Additional items not tested:**

- LCSO Item #JY002; People's Exhibit #51
- LCSO Item #JY009; People's Exhibit #52
- LCSO Item #JY012; People's Exhibit #53
- LCSO Item #JY023; People's Exhibit #54
- LCSO Item #RG015; People's Exhibit #55
- LCSO Item #RG016; People's Exhibit #56
- LCSO Item #RG017; People's Exhibit #57



LCSO Item #RG018; People's Exhibit #58  
LCSO Item #JY001; People's Exhibit #59  
Additional items previously tested in IFI case # NL-29683:  
LCSO Item #JY003; People's Exhibit #60  
LCSO Item #JY004; People's Exhibit #61  
LCSO Item #JY006; People's Exhibit #62  
LCSO Item #JY007; People's Exhibit #63  
LCSO Item #JY011; People's Exhibit #64  
LCSO Item #JY020; People's Exhibit #65

Via hand delivery by John Larsen;  
Arrived at Independent Forensics on 05/31/2018;  
One item as follows:

Exhibit # 6: Portion of LCSO Item #RG026; People's Exhibit # 43; stained fabric (35624-102847-Q3)

Via hand delivery by John Larsen;  
Arrived at Independent Forensics on 08/28/2018;  
Five items as follows:

Exhibit # 7: DPD Item #054; LCSO Item #DT010; brown paper bag labeled kitchen door knob from inside containing:

Exhibit #7A: kitchen door knob from inside (35624-104232-Q4)

Additional items not tested:

Two screws

Exhibit # 8: DPD Item #055; LCSO Item #DT009; kitchen door knob from outside (35624-104233-Q5)

Additional items not tested:

DPD Item #044; LCSO Item #JY016

DPD Item #051; LCSO Item #DT008

DPD Item #052; LCSO Item #DT007

Client requested genetic identification testing on Exhibit # 6 to serve as a reference for victim Rhoni Reuter. Client requested genetic identification testing on Exhibits # 1-5 and 7-8, to determine if a human DNA profile could be generated from the items, for comparison to the reference profile generated from Exhibit # 6 and the reference profile previously reported for Marni Yang (29683-102847-Ref\_1).

**Procedure for Genetic Identification:**

A sterile cotton swab moistened with lysis buffer was used to collectively sample Exhibits # 1, 2 and 3 (35624-102771-Q1). A sterile cotton swab moistened with lysis buffer was used to sample Exhibit # 5 (35624-102773-Q2). Swabs were processed as per Touch DNA Procedure and were analyzed for CSF1PO, D2S1338, D3S1358, D5S818, D7S820, D8S1179, D13S317, D16S539, D18S51, D19S433, D21S11, FGA, TH01, TPOX, vWA and Amelogenin using the AmpFSTR Identifiler kit as per LCN protocol.

A cutting of red-brown stained area approximately 0.50 cm<sup>2</sup> was removed from Exhibit # 6 (35624-102847-Q3), processed as per protocol for DNA extraction from blood stains, and analyzed for CSF1PO, D2S1338, D3S1358, D5S818, D7S820, D8S1179, D13S317, D16S539, D18S51, D19S433, D21S11, FGA, TH01, TPOX, vWA and Amelogenin using the AmpFSTR Identifiler kit as per protocol.

A sterile cotton swab moistened with lysis buffer was used to sample Exhibit # 7A (35624-104232-Q4). A sterile cotton swab moistened with lysis buffer was used to sample Exhibit # 8 (35624-104233-Q5). Swabs were processed as per Touch DNA Procedure and analyzed for CSF1PO, D2S1338, D3S1358, D5S818, D7S820, D8S1179, D13S317, D16S539, D18S51, D19S433, D21S11, FGA, TH01, TPOX, vWA and Amelogenin using the AmpFSTR Identifiler kit as per LCN protocol.

Samples 35624-102771-Q1 and 35624-102773-Q2 were analyzed for DYS19, DYS385, DYS389I, DYS389II, DYS390, DYS391, DYS392, DYS393, DYS437, DYS438, DYS439, DYS448, DYS456, DYS458, DYS635, and Y GATA H4 using the AmpFSTR Yfiler kit as per protocol.

**Results:**

A partial autosomal DNA profile was obtained from 35624-102771-Q1.

A partial autosomal DNA profile was obtained from 35624-102773-Q2.

DNA data were obtained from 35624-102847-Q3 at all loci examined.

No reproducible DNA data were obtained from 35624-104232-Q4.

A partial DNA profile was obtained from 35624-104233-Q5.

A partial Y-STR profile was obtained from 35624-102771-Q1.

A partial Y-STR profile was obtained from 35624-102773-Q2.

STR Summary Results

Locus	Q1 102771 consensus	Q2 102773 consensus	Q3 102847	Q5 104233 consensus
D8S1179	13	13,15,16	15,16	
D21S11			28,29	
D7S820			12,13	
CSF1PO			10,13	
D3S1358	16	14,16	14,16	14
TH01	9,9.3	8,9,9.3	8,9.3	
D13S317		9,12	9,12	
D16S539	11	11,12	11,12	
D2S1338			19,24	
D19S433	14,15	14,16	14,16	
vWA		14,16	14,16	
TPOX		8	8,11	
D18S51		12	12,13	
AMEL		X	X	
D5S818		12	12,13	
FGA			18,22	

Y-STR Summary Results

Locus	Q1 102771	Q2 102773
DYS456		
DYS389I	14	
DYS390	23	23
DYS389II		
DYS458	17	
DYS19		
DYS385		15
DYS393	13	
DYS391		
DYS439		
DYS635		
DYS392		
YGATAH4		
DYS437		
DYS438		
DYS448		

**Interpretation:**

The DNA profiles obtained from Exhibits # 1-3 (35624-102771-Q1) are indicative of a single male contributor; or, assuming the victim is a contributor, of two contributors, including one female and one male.

The DNA profiles obtained from Exhibit # 5 (35624-102773-Q2) are indicative of a mixture of two contributors, including one female and one male, assuming the victim is a contributor.

The DNA profile obtained from Exhibit # 6 (35624-102847-Q3) is indicative of a single female contributor.

No interpretable human DNA profile could be generated from Exhibit # 8 (35624-104233-Q5).

**Conclusions:**

Rhoni Reuter is assumed to be a potential contributor to DNA data generated from the 9mm live rounds and kitchen door knobs.

Marni Yang is excluded as a contributor to the DNA profiles generated from the 9mm live rounds (Exhibits # 1-3).

Marni Yang is excluded as a contributor to the DNA profiles generated from the 9mm live round (Exhibit # 5).

DNA data reported for the stained fabric (Exhibit #6) constitute the reference DNA profile of victim Rhoni Reuter.

There are insufficient data for source attribution of any biological material on the kitchen door knobs.

Marni Yang is excluded as a contributor of the single reproducible allele generated from the kitchen door knob from outside (Exhibit # 8).

**Disposition of Exhibits:**

All items received on 05/17/2018 were released to Dr. Carlo Rosati on 06/20/2018.

Exhibit # 6 to be destroyed per client's authorization.

All items received on 08/28/2018 were released to John Larsen on 10/04/2018.



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Shelby Carlson, B.S.  
Forensic Scientist

This test is accredited under the laboratory's ISO/IEC 17025 accreditation issued by the ANSI-ASQ National Accreditation Board. Refer to certificate and scope of accreditation AT-1639.