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MAY 08 2020
Eric Carlsberg Weinstock
CIRCUIT CLERK

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

PEOPLE OF THE STATE OF ILLINOIS

v.

MARNI YANG

GENERAL NO. 09 CF 926

PEOPLE'S SUPPLEMENTAL MOTION FOR DNA TESTING

Now comes Michael G. Nerheim States Attorney Lake County Illinois, by and through his assistant Jason R. Humke and hereby requests that the court amend its February 27, 2020 discovery order to direct Independent Forensics, to release the DNA extract the lab generated from the medical alert bracelet for comparative testing by Bode Technology. In support of said motion the People state as follows:

1. On February 27, 2020 the court granted the People's Motion for DNA testing of the swabs taken of the bracelet and unfired rounds by the Defendant's chosen laboratory, Independent Forensics. On that date, the defense represented in court that these swabs still existed and were available for comparative testing. At the People's request, the court confined its order to production of these swabs.
2. On March 4, 2020 when presented with the court's discovery order, representatives from Independent Forensics, the Defendant's laboratory, informed the People that the swabs for these items were in fact completely consumed during their testing process. (See Attached Exhibit 1).

3. The People are therefore unable to conduct any comparative testing of the actual swabs taken of the medical alert bracelet and unfired rounds entered into evidence in this case as those swabs no longer exist.
4. Pursuant to the Court's February 27, 2020 discovery order, the People also attempted to re-swab the medical alert bracelet itself in an effort to test any remaining DNA that was not removed by Independent Forensics during their testing process. The bracelet was sent to the Northeastern Illinois Regional Crime Laboratory (NIRCL) and swabbed for DNA. Unfortunately, insufficient DNA remains on the bracelet itself for NIRCL to conduct DNA analysis. (See Attached Exhibit 2).
5. The People still seek comparative DNA testing of the DNA found on the medical alert bracelet. Therefore, the People seek the court to amend its February 27, 2020 Discovery order to direct Independent Forensics to release the extract generated from the DNA collected from the medical alert bracelet, as well as the reagent control blank associated with this extract, for shipment to Bode Technology for comparative DNA testing.
6. Independent Forensics has informed the People that the DNA extract still exists and would be available for release if ordered. (See Attached Exhibit 1).
7. The People contend that comparative testing of the DNA found on the bracelet could refute the claims made by the Defendant in her Post-Conviction Petition as well as to confirm the Defendant's guilt of the crimes she was convicted of.
8. The People seek this comparative testing for three reasons: (1) a superior test kit exists that tests at more locations than the test kit used by Independent Forensics;

(2) this test kit is also more sensitive and can obtain more information from a small amount of DNA than the test kit used by Independent Forensics; and (3) probabilistic genotyping software is available to analyze the DNA mixture found by Independent Forensics to determine the statistical likelihood that the Defendant's DNA is part of the mixture. From the results provided by Independent Forensics, the People contend that additional testing of the DNA discovered on the bracelet could demonstrate that the Defendant's DNA was found on the medical alert bracelet. This would obviously be further evidence of the Defendant's guilt and highly relevant to the ultimate disposition of her Post-Conviction Petition.

9. Given that the swabs taken of the bracelet were consumed by Independent Forensics, and insufficient DNA remains on the bracelet for further testing, the only possible option left available to the People to conduct comparative DNA testing is to test the remaining extract created by Independent Forensics.
10. In order to do this, the People will be required to retain the services of a private vendor laboratory. As stated in court back on February 27th, the Northeastern Illinois Regional Crime Laboratory (NIRCL) would not be able to take ownership and test the DNA extract created by Independent Forensics. NIRCL does not participate in outsourcing and is an NDIS participating crime laboratory requiring it to be compliance with the FBI Quality Assurance Standards (QAS). Independent Forensics is not. NIRCL therefore can not take ownership of the DNA extracts generated by Independent Forensics.
11. The People have therefore made arrangements with another private vendor laboratory, Bode Technology, to conduct testing of the DNA extract created by

Independent Forensics. The People are prepared to engage this lab's services to conduct comparative testing of the DNA extract of the bracelet, should the court order its release.

12. Bode Technology would be retained to test this DNA utilizing the Globalfiler test kit, which tests for markers at 24 locations (21 locations plus 3 sex/gender markers). This would test for markers at locations that the Identifiler test kit used by Independent Forensics does not test for. More importantly, the Globalfiler test kit is also more sensitive than the Identifiler test kit used by Independent Forensics and can provide more information from the small amount of DNA available.
13. Bode Technology would also be retained to engage in probabilistic genotyping utilizing the STRMix genotyping software, which the lab has also been validated on. This probabilistic genotyping technology is utilized specifically on DNA mixtures such as was found in this case to determine the statistical probability that the Defendant's DNA is a contributor to the mixture.
14. Bode Technology has provided the People with a formal cost estimate and projected timeline for completion of this testing.
15. Independent Forensics has informed the People of the amount of DNA extract generated from the medical alert bracelet that still remains. (See Attached Exhibit 1). Based upon this lab's representations of the amount of extract that remains, Bode Technology has determined that a sufficient amount of extract exists for the lab to conduct the comparative testing sought. Bode Technology has indicated that they would also require the reagent control blank associated with this extract in order to test this extract.

16. Bode Technology has also informed the People that consumptive testing of the DNA extract would be required given the small amount of extract that remains. The People therefore request that consumptive testing be authorized by Bode Technology in order to conduct their testing.

17. Finally, the People are also requesting that the court enter a discovery order allowing the People to obtain a DNA reference sample from the Defendant to send to Bode Technology for their testing along with the extract. Such a reference sample would be obtained with minimal intrusion by taking a buccal swab of the Defendant's cheek. A reference standard of the Defendant's DNA developed using the same Globalfiler test kit would be necessary to compare the Defendant's DNA to the DNA extract generated from the bracelet.

WHEREFORE, the People respectfully request that the court grant the People's discovery request at this time.

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

By: HUMKE.JASON.ROBERT.11409
58715
JASON R. HUMKE
Assistant State's Attorney

Digitally signed by HUMKE.JASON.ROBERT.1140958715
DN: c=US, o=Ill. Government, ou=DOJ, ou=PRO, ou=USA,
cn=HUMKE.JASON.ROBERT.1140958715
Date: 2020.05.08 13:54:21 -05'00'

Humke, Jason R.

From: Liz Kopitke <liz@ifi-test.com>
Sent: Wednesday, March 04, 2020 4:58 PM
To: Humke, Jason R.; Karl Reich; Pasquesi, Joseph
Cc: Jed Stone
Subject: RE: IL v Yang, Court order entered Feb 27, 2020, Re: Swabs of Medical Alert Bracelet, Bullets tested by Defense Laboratory

Mr. Humke,

Based on case file documentation, estimated remaining volumes of DNA extract for samples from the bracelet and unfired rounds and their applicable blanks are as follows:

- Bracelet (29683-100518-Q3) ~10 ul
- Bracelet Sampling Blank (SB-20170925) ~10 ul
- Bracelet Extraction Blank (xSN-20170925) ~10 ul
- Collective sample of live rounds JY005, JY008, JY010 (35624-102771-Q1) ~12 ul
- Q1 Sampling Blank (35624-102772-SB) ~12 ul
- Sample of live round JY019 (35624-102773-Q2) ~12 ul
- Q2 Sampling Blank (35624-102774-SB2) ~12 ul
- Live rounds Extraction Blank (xSN 20180619) ~12 ul

Based on case file documentation
Liz Kopitke

Technical Leader & Quality Manager
 Relationship Testing Laboratory Supervisor
 Independent Forensics
 T. 708-234-1200

From: Humke, Jason R. <JHumke@lakecountyil.gov>
Sent: Wednesday, March 4, 2020 3:08 PM
To: Karl Reich <karl@ifi-test.com>; Pasquesi, Joseph <JPasquesi@lakecountyil.gov>
Cc: Liz Kopitke <liz@ifi-test.com>; Jed Stone <jstone@jedstone.com>
Subject: RE: IL v Yang, Court order entered Feb 27, 2020, Re: Swabs of Medical Alert Bracelet, Bullets tested by Defense Laboratory

Dr. Reich,

Thank you for getting back to us.

Regarding the extracts that remain for the tested items (unfired rounds and the bracelet), how many microliters of extract are left in the sample tubes? That would help us determine if any additional court orders would be necessary.

v/r
 Jason Humke

From: Karl Reich <karl@ifi-test.com>

Sent: Wednesday, March 4, 2020 2:33 PM

To: Humke, Jason R. <JHumke@lakecountyil.gov>; Pasquesi, Joseph <JPasquesi@lakecountyil.gov>

Cc: Liz Kopitke <liz@ifi-test.com>; Jed Stone <jstone@jedstone.com>

Subject: IL v Yang, Court order entered Feb 27, 2020, Re: Swabs of Medical Alert Bracelet, Bullets tested by Defense Laboratory

Dear Mr. Humke,

This e-mail is in response to the call from Mr. Pasqueli in his effort to schedule retrieval of items listed in the recently filed court order (copy attached for your convenience).

Unfortunately there is a technical issue with the court order that makes it impossible for our laboratory to comply with the order as currently written – this issues, and a related consequence, are described below.

Please note that our laboratory does not have the physical items listed – bracelet and bullets. These have been returned to the originating agency. The bracelet on 11/12/2008 [Mr. LaPino] and the bullets on 06/20/2018 [Dr. Rosatti] - these items are not expressly requested in the court order, but wanted to make their disposition clear.

1) forensic procedure (standard throughout this field) is to 'convert' evidence to a swab. In practical terms this means rubbing a moistened swab against the physical evidence to collect, on the swab, whatever biological material was on the original evidence. The laboratory will then process the swab(s) through the various steps required to try and generate a DNA profile (extraction, DNA purification, DNA quantification, amplification, analysis).

Here, the items have/had very (very) little biological material and the laboratory consumed the swabs during the process of producing an extract (extract = small volume of liquid in a small tube). The extract is then used for DNA quantification (measuring how much DNA was recovered from the swab from the evidence) and for DNA amplification.

Extract remains from the process steps – the swabs do not.

2) Accredited forensic DNA laboratories operate under audit standards set forth (for our purposes today) by the FBI. These standards (FBI QAS (for quality assurance standards)) have definitions for what is called 'work product' and for what is called 'taking ownership'. The language of the relevant standard in regard to the extract (mentioned above) is completely clear: DNA extracts are work product of the laboratory. The plain language interpretation of the swabs, which in the case of the bracelet and bullets, were produced in our laboratory, would also be designated a work product. For another accredited forensic DNA laboratory to accept work product from another forensic laboratory, they have to 'take ownership' of the item / data. Taking ownership requires, among other things, an inspection of the originating laboratory. The details are in the FBI QAS and would certainly be known by NIRCL.

The court can certainly order that the extracts from the designated items (medical bracelet and live rounds) be transferred to the State's Attorney, to the court, to wherever it pleases the court. Please note that for a forensic laboratory to accept the extracts and work with them, the accepting laboratory will have to take ownership of the extracts as per FBI QAS.

So, the court order will have to be amended to specify that the extracts derived from the physical evidence are the items to be transferred. No problem acceding to this request, just need the accurate court order duly signed.

The majority of this issue was previously detailed in an e-mail from Ms. Liz Kopitke – i.e., the items themselves were returned and the swabs consumed. Extract remains. The issue of consumption has previously been a discussion point. Briefly, consumption refers to either consuming the swabs and/or consuming the recovered DNA. Here there is recovered DNA available for additional testing, analysis, storage, . . . whatever is decided. The DNA was not consumed, the swabs were and thus they cannot be tendered.

Hope this helps clarify the issues and provides a simple path to an accurate court order that we will of course immediately comply with.

So, the court order will have to specify that the items of evidence are the extracts derived from the physical evidence and not the physical evidence itself. The court order will have to specify that the items of evidence are the extracts derived from the physical evidence and not the physical evidence itself.

Regards,

Karl Reich

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Northeastern Illinois Regional Crime Laboratory

DNA Report



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Board President
Steve Husak

Executive Director
Philip T. Kinsey, Ph.D.



Sheriff John D. Idleburg
Lake County Sheriff's Office
25 S. Martin Luther King Ave.
Waukegan, IL 60085

Subject: Homicide Investigation
Agency Case #: 07-15329
Case Officer: LCMCTF
Submission Date: 03/06/2020

Laboratory Case #: 07-4728
Laboratory Report #: 26
Report Date: 03/18/2020

Case Names: Rhoni R Reuter
Shaun L Gayle
Mami Yang

The following evidence was submitted/retained in a sealed condition:

ITEM 69 Exhibit 01 one medical alert bracelet
(CMF002)

RESULTS

The stains collected from bracelet were extracted for DNA.

The stain(s) from bracelet are of human origin, however failed to yield a sufficient amount of DNA for DNA profiling using the GlobalFiler amplification kit. Additional analysis was not conducted.

DNA evidence will be maintained at the laboratory should further analysis be required.

Should further analysis be required, please contact this examiner.

The results portion of this report contains scientific judgments and interpretations rendered by the individual whose signature appears on the report.

Please pick up all appropriate exhibits at your earliest convenience.

Reviewer
Gina M. Havlik, M.S.

Forensic Scientist
Michelle L. Thomas, M.S.