

STATE OF MICHIGAN

WASHTENAW COUNTY CIRCUIT COURT

In The Matter Of:

People v. Gary Leiterman

File No. 04-2017-FC

CRIMINAL JURY TRIAL CONTINUED

BEFORE HONORABLE DONALD E. SHELTON, JUDGE

Ann Arbor, Michigan-Tuesday, July 19, 2005

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1
2
3
4 TABLE OF CONTENTS

		PAGE
1	WITNESS: Defendant	
2	Jeffrey Nye	Direct Examination 4
3		Cross Examination 24
4	Crystal Harrison	Direct Examination 45
5		Cross Examination 47
6	Patrick Bell	Direct Examination 51
7	Jeremy Hilobuk	Direct Examination 54
8		Cross Examination 59
9		Re-Direct Examination 60
10	Frederick Pacheco	Direct Examination 60
11		Cross Examination 59
12		Re-Direct Examination 79
13	Ramona Delira	Direct Examination 81
14		Cross Examination 86
15	Tameka Singleton	Direct Examination 94
16		Cross Examination 98
17		Re-Direct Examination 100
18	Robert Kaplan	Direct Examination 101
19		Cross Examination 108
20	Megan Shaffer	Direct Examination 113
21		Cross Examination 122
22		Re-Direct Examination 125

1
2 TABLE OF CONTENTS CONTINUED

	WITNESS: Defendant	PAGE
3	Megan Shaffer(cont.) Re-Cross Examination	126
4	Re-Direct Examination	127
5	Sylvia Gill	132
6	Direct Examination	
7	Cross Examination	146
8	Re-Direct Examination	150
9	Orville Hamilton	152
10	Re-Cross Examination	
11	Direct Examination	153
12	Cross Examination	156
13	<u>WITNESS: Plaintiff</u>	
14	NONE	
15	<u>EXHIBITS:</u>	
16	People's Exhibit 79	56
17	People's Exhibit 80	56
18	People's Exhibit 40	97
19	People's Exhibit 81	97
20	People's Exhibit 47	107
21	People's Exhibit 51	107
22	People's Exhibit 83	121
23	People's Exhibit 82	155
24		
25		

1 Ann Arbor, Michigan

2 Tuesday, July 19, 2005 at 8:04 a.m.

3 THE LEGAL CLERK: Washtenaw County Trial
4 Court is now in session, the Honorable Donald E.
5 Shelton, presiding.

6 THE COURT: Ready for the jury--please,
7 bring the jury. Good morning.

8 MR. GABRY: Good morning.

9 MR. HILLER: Good morning, your Honor. Your
10 Honor, may counsel approach?

11 THE LEGAL CLERK: All rise for the jury,
12 please.

13 THE COURT: Not right now. Please be
14 seated. Good morning ladies and gentleman.

15 THE JURY: Good morning.

16 THE COURT: I imagine that this morning you
17 discovered a little taste of what it is like to work
18 in downtown Ann Arbor in the middle of the Art Fair.
19 It promises to get worse during the middle of this
20 week, but you'll treat it as an opportunity. Are you
21 ready to proceed?

22 MR. HILLER: Yes, your Honor.

23 MR. GABRY: Yes, your Honor.

24 THE COURT: Call your next witness, please.

MR. HILLER: Thank you, your Honor. The People call Jeff Nye.

THE COURT: Sir, face the clerk, raise your right hand and be sworn.

THE COURT CLERK: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth?

MR. NYE: Yes, I do.

(witness sworn at 8:06 a.m.)

THE COURT CLERK: Have a seat right up there.

THE COURT: Would you state and spell your first and last names please.

THE WITNESS: Jeffrey Nye. J-e-f-f-r-e-y,
last name is spelled N-y-e.

THE COURT: Thank you. Prosecutor.

JEFFREY NYE

DIRECT EXAMINATION

BY MR. HILLER:

Q By whom are you employed?

A I'm employed with the Michigan State Police Forensic Laboratory in Lansing, Michigan.

Q And what do you do at the Lansing Laboratory?

A I am a supervisor of the biology DNA sub-unit there.

Q How long have you worked for the State Police?

1 A About nine and a half years.

2 Q Are you enlisted or are you a civilian?

3 A I am a civilian.

4 Q During your nine and a half years at the State

5 Police, have you always worked with the forensic

6 science division?

7 A Yes, I have.

8 Q All of it in the biology area?

9 A Yes, I have.

10 Q Would you tell the Court and the Jury, please,

11 briefly about your educational background starting

12 with college?

13 A I have a four year bachelors of Science degree in

14 biochemistry from Michigan State University. I have

15 two Masters Degrees, one in soil science and one in

16 toxicology, also from Michigan State University. I

17 have taken some additional course work at Lansing

18 Community College in molecular biology.

19 Q Have you received training while at the Michigan

20 State Police forensic science division?

21 A Yes, upon employment from the Michigan State Police,

22 we go through a very vigorous training procedure in

23 which we work with a senior analyst within the

24 laboratory for approximately a year to a year and a

25 half learning their procedures and policies and

1 techniques prior to actually doing the casework
2 independently.

3 Q How long does that go on for?

4 A Typically about a year to a year and a half.

5 Q You successfully completed that?

6 A Yes, I have.

7 Q Have you had any continuing education class,
8 seminars, things of that nature in connection to DNA
9 testing?

10 A Yes, I have. We're actually required to attend
11 continuing education every year as part of our
12 accreditation process. That typically involves going
13 to a profession seminars at which they have
14 different areas related to forensic testing. I can
15 be any where from learning new techniques to
16 learning statistical procedures, hearing
17 professional talks, validations and things of that
18 nature.

19 Q You indicated that you are supervisor of that unit
20 at this point?

21 A Yes, I am.

22 Q How long have you had that position?

23 A Approximately a year.

1 Q When--well, let me ask you this. Have you had
2 occasion, with your time at the Michigan State
3 Police, to conduct examinations of evidence for DNA?

4 A Yes, I have.

5 Q Approximately how many occasions?

6 A Thousands over the time of my employment, I went
7 through my one to one and a half years of training,
8 from that time until I became supervisor, probably
9 I've analyzed three to four hundred cases per year.

10 Q Have you testified as an expert in the field of DNA
11 identification in Courts in the State of Michigan or
12 elsewhere?

13 A Yes, I have.

14 Q Approximately how many occasions?

15 A For the State of Michigan, well over a hundred times
16 for DNA, I've testified for Federal Court once for
17 the prosecution and once for the defense.

18 MR. HILLER: Your Honor, I would offer
19 Jeffrey Nye as an expert in the field of DNA
20 identification.

21 THE COURT: Any objection?

22 MR. GABRY: No, your Honor.

23 THE COURT: The Court will hear expert
24 testimony from Dr. Nye. Please proceed.

25 BY MR. HILLER

1 Q Mr. Nye, during the course of your employment, did
2 you have occasion to conduct any tests on evidence
3 that were submitted to you in connection to the
4 homicide of Margaret Ruelas in the city of Jackson,
5 Michigan?

6 A Yes, I did.

7 Q When did you receive that evidence?

8 A If I can refer to my notes?

9 Q Yes, please.

10 A I received evidence of April the second of 2002.

11 Q Did that evidence include--well, can you tell us
12 what that evidence included?

13 A Yes. I received--actually I received some additional
14 evidence in January of 2002 as well and then
15 subsequently conducted DNA testing in April of 2002.
16 The evidence that I received in January 2002 was
17 directly from the crime scene and that was delivered
18 to our unit from the crime scene crew from our
19 laboratory, and that was January 28, 2002 and it
20 came to me through our property room. I removed it
21 from our property room April 2, 2002. That was in
22 the form of one sealed manila envelope. It has a
23 series of coin envelopes that actually had seventeen
24 coined envelopes inside a larger manila envelope

1 that had blood stains that were collected from the
2 crime scene.

3 Q Did you have, as part of the evidence submitted to
4 you, a known sample of John Ruelas' DNA?

5 A No, I did not.

6 Q No blood, no buckle swabs?

7 A No.

8 Q You indicated that you--that your testing commencing
9 on April 2, 2002?

10 A Yes, I did.

11 Q Can you tell us, please, what was the first step in
12 that testing that you did on April 2, 2002?

13 A The first thing that I did was, actually, itemize
14 the evidence. Go through and describe the type of
15 evidence that I'm receiving; how it's packaged, how
16 it's labeled. Then we actually start the DNA process
17 where we actually extracted the DNA from the samples
18 and then go through the actually characterization of
19 the DNA and develop DNA profiles.

20 Q Would it be fair to say that the first time this
21 evidence was out of the packaging, out of the
22 evidence storage area was on April second?

23 A Yes.

24 Q Were you able to complete the testing in that case
25 and were you able to get profiles from the evidence?

1 A Out the seventeen coin envelopes that I received out
2 of this case, I only conducted DNA on four of those
3 seventeen. The other thirteen pieces of evidence
4 were never opened in the laboratory. So, the four
5 items that I did test, I was able to develop DNA
6 profiles from those items.

7 Q Were you able to identify the person whose profile
8 it was?

9 A Yes, I was.

10 Q And who's profile did that match?

11 A The DNA profiles that I developed from the four
12 items recovered from the crime scene were from a
13 female and the DNA matched that of a Margaret
14 Ruelas.

15 Q On all four?

16 A Yes.

17 Q Were those single source profiles?

18 A Yes, they were.

19 Q Now, in your capacity as supervisor, did there
20 become a time where you became aware of some
21 concerns regarding the testing that Dr. Milligan had
22 done in connection with the Jane Mixer homicide?

23 A Yes.

24 Q In response to those concerns, did you take any
25 actions?

1 A Yes, I did.

2 Q What did you do?

3 A I reviewed the case jacket materials on the Dr.

4 Milligan testing on the Jane Mixer homicide and also

5 reviewed the case jacket materials from the testing

6 that I did as well as Sara Thivault, from our

7 laboratory in connection to the investigation on the

8 Margaret Ruelas homicide.

9 Q As a result of that review, are you able to form an

10 opinion as to whether you believe there was

11 contamination on this case?

12 A Yes, I am.

13 Q What is your opinion?

14 MR. GABRY: Your Honor, I'll object to the

15 opinion before the evidence on which it is based is

16 put into the--into the--

17 THE COURT: I'll sustain. Why don't you

18 wait.

19 BY MR. HILLER

20 Q You indicated that you were able to reach an

21 opinion, can you tell the Court, please, and tell

22 the jury what forms the basis of that opinion? What

23 did you discovery about these cases?

24 A Well maybe it should be noteworthy of what our

25 contents of our case jacket actually is. Our case

1 jackets are a complete history if what is done with
2 every sample and every piece of evidence pertaining
3 to that case. At any given time, anybody could
4 review and locate every single worksheet that
5 dockets every single step in that case and come to
6 some conclusion as to how the sample was handled,
7 what type of reagents and chemicals are used, the
8 lot number of all those chemicals, the dates that
9 they are actually handled one each and every step so
10 that you can compare side by side--on this instance
11 the Margaret Ruelas homicide with Jane Mixer case
12 and you can come to some conclusion as to which
13 dates each analysts were handling different pieces
14 of evidence and doing the different techniques to
15 actually develop the different profiles and you can
16 come to some conclusion as to whether they have ever
17 crossed paths in the laboratory and whether there's
18 a possibility that contamination could have
19 occurred.

20 Q What did you find?

21 A What was indicated to me was that the evidence that
22 Margaret--on the Margaret Ruelas homicide that;
23 number one, the evidence that I analyzed, I never
24 developed a DNA profile from a male. All the DNA
25 profiles I developed was from a female matching that

1 of Margaret Ruelas. The evidence that Sara Thivault
2 analyzed, she did develop one sample that had a
3 mixture with DNA for more than one person and that
4 mixture was consistent with Margaret Ruelas and then
5 a male as a minor donor. That sample that was
6 handled came into our laboratory on January 29, 2002
7 and it was handled for one day as what we call bulk
8 evidence. What I mean by bulk evidence was, this was
9 a large piece of evidence in a shirt and that large
10 piece of evidence was evaluated as a single day. It
11 was actually removed from our evidence property
12 area, examined for one day, a subset of that shirt
13 sample of that shirt was taken for DNA processing
14 and then the actual bulk shirt was returned to our
15 property room. So, that piece of evidence was only
16 out for one day in our laboratory. Following that
17 was a Jane Mixer case. Steve Milligan had, what we
18 call bulk evidence, out for also approximately two
19 days, but that occurred a little over a month after
20 Sara Thivault had her evidence out on the Margaret
21 Ruelas homicide. Within that timeframe, from the
22 time that Sara had her evidence out and the time
23 Steve Milligan had his evidence out, it was a little
24 over a month so we would have probably seen over one
25 to three hundred cases go through the laboratory in

1 that month span there. Then we move to the DNA
2 processing area and Sara was actually two thirds of
3 the way through her testing of the Margaret Ruelas
4 case before Steve Milligan actually began his
5 testing on the Jane Mixer case in respect to DNA. He
6 actually completed his testing prior to her
7 completing her testing on the DNA and he actually
8 had his results required and in paper results prior
9 to her completion of her testing.

10 Q Did you also look at the reports themselves?

11 A Yes, I did.

12 Q As part of looking at those reports, did you look at
13 the controls that were in place when the tests were
14 run?

15 A Yes, I did.

16 Q Was there any indication in those controls that
17 there had been any contamination?

18 A No, there was not.

19 Q We've heard mention, during the course of this
20 trial, that there is--there are two separate DNA kits
21 that are used; the profiler and the profile plus, do
22 I have them right?

23 A Yes. We look at a total of thirteen different
24 genetic markers and to achieve thirteen genetic
25 markers on forensic evidence we actually have to

1 amplify or process the DNA with two different
2 commercial kits to total up to thirteen. The first
3 kit is called Profiler Plus that is just a trade
4 name for the company that produces the kit and that
5 actually produces the end result of that is nine
6 genetic markers plus the gender that is called
7 ambulangenin. The Co-filer kit is the second
8 amplification kit that we use and that actually
9 analysis for six different markers plus the
10 ambulagenin gender marker. If you do the mat real
11 quick, that totals up to fifteen markers and I
12 mentioned that we only look at thirteen different
13 genetic markers. The reason for that is you amplify
14 those--or process those at two separate times there
15 is a overlap of two genetic markers between the two
16 kits as part of a quality control, quality insurance
17 method, so that when you actually those reactions at
18 separate times, you should get the same results on a
19 two separate reactions of the markers that are
20 overlapping.

21 Q Did you inspect Dr. Milligan's results, in
22 particular, in respect to the blood off the left
23 hand of Jane Mixer?

24 A Yes, I did.

1 Q Did you look at the two separate kits to see if the
2 overlap occurred and whether they were consistent?

3 A Yes, they did. He actually amplified more process
4 for those two different kits, separated by a week.
5 He amplified the Co-filer genetic marker on March 28,
6 2002 and then he analyzed those results and then he
7 went ahead and amplified for the Profiler Plus the
8 nine genetic markers on April 4, 2002 so there was
9 separated by a little bit over a week when he
10 amplified those two sets.

11 Q Were those results consistent?

12 A Yes, they were.

13 Q Were there any other findings that you made--any
14 other things that you learned from the inspection of
15 these case jackets that are significant, in your
16 opinion, in these cases?

17 A Yes. The one sample that Sara Thivault analyzed that
18 had a mixture of DNA, meaning there was DNA from
19 more than one person, that was consistent with
20 Margaret Ruelas and then later determined to be that
21 on John Ruelas, it was a mixture. There was DNA from
22 more than one person there. The makeup of that
23 mixture was such that the DNA types that were
24 consistent with Margaret Ruelas was significantly
25 higher--significantly more DNA from Margaret Ruelas

1 than that of John Ruelas. John Ruelas was a minor
2 contributor to that DNA mixture. When you compare
3 that mixture to Dr. Milligan's results with the Jane
4 Mixer case, with the blood sample that was from the
5 left hand of Jane Mixer, he had, for all intensive
6 purposes, a single source profile that was found to
7 be consistent with that of John Ruelas. There was no
8 indication of that sample that Margaret Ruelas was a
9 component of that mixture. Actually, it was more
10 consistent--there were some DNA types that were
11 consistent with Jane Mixer. The makeup of the
12 mixture was significantly different from each other
13 which would lend one to believe that there was no
14 contamination from one sample to another.

15 Q Once Sara Thivault and Steve Milligan had finished
16 processing the bulk evidence, how is the evidence
17 stored in each case?

18 A We have--the layout of our laboratory--we have a
19 separate laboratory where we analyze bulk evidence.
20 What I mean by bulk evidence, again, is clothing,
21 bedding, sexual assault kits, things that are a
22 little larger in nature where you are actually
23 looking for the biological stains and making some
24 determinations and characterizations as to what type
25 of stains you have. That's done in a separate

1 laboratory space. That's a separate room within our
2 unit. There is a door that separates everything and
3 there is separate utensils, separate equipment,
4 separate bench areas that are used in that area.
5 Again, that processing that Sara Thivault did was a
6 month prior to the time Dr. Milligan was analyzing
7 the Jane Mixer case. Once those pieces of evidence
8 are transferred out for DNA testing, then it's a
9 separate facility from--separate area in the
10 laboratory from the bulk evidence processing. At
11 that point, every single sample is in an individual
12 tube that's capped and sealed and stored separated
13 from each other analyst's evidence. So, each analyst
14 that moves the batches of samples for DNA testing is
15 actually stored in separate racks, separate shelves
16 within refrigerators and freezers and sometimes in
17 separate freezers as well and then they never cross
18 paths. Once an analyst starts the DNA processing
19 that finish it from beginning to end. They don't
20 typically transfer evidence from one analyst to
21 another analyst. They're processed independently.

22 Q In these cases, where in fact--where these cases
23 processed from beginning to end by the scientist;
24 who started the processes?

25 A Yes, they were.

1 Q Can you tell us, please, what your opinion is as to
2 whether there was any contamination in this case?
3 A My opinion would be that there was no indication,
4 whatsoever, that there was any indication of
5 contamination of the Jane Mixer case with the
6 Margaret Ruelas case. In fact, to be perfectly
7 honest, I don't think it is even feasible to have
8 that type of contamination when you actually look at
9 that makeup of the two different mixtures. It's
10 actually, technically, not feasible to separate the
11 components of the mixture that we saw in the
12 Margaret and John Ruelas homicide and actually
13 recreate a mixture in a different format with that
14 in the Jane mixer case that was found on her left
15 hand.
16 Q I've heard a little bit about the laboratory--the
17 Lansing laboratory. Can--can you, as supervisor,
18 tell us a little more about some of the technology
19 that's in place to keep it a clean environment for
20 DNA processing?

21 A As part of our--number one, as part of the Lansing
22 laboratory, as well as all the laboratories in the
23 forensic science division of the Michigan State
24 Police are accredited. We are accredited by an
25 organization call ASCLD which stands for American

1 Society of Crime Lab Directors. As part of that
2 accreditation process is they come through and they
3 evaluate your facility and evaluate how you handle
4 evidence and how you store evidence and there are
5 some minimal requirements in order to be accredited
6 for your facility. The Lansing laboratory, in
7 particular, is a brand new facility. They built it
8 basically, I think around 1999-2000. We moved in May
9 of 2001, so, at the time of testing on these two
10 cases, our facility was actually only about ten or
11 eleven months old. It is a brand new facility. It is
12 approximately 83,000 square feet; it is a rather
13 large facility. In 2001, it was probably the best
14 forensic laboratory in the nation. There has been a
15 couple that has been built in the last year or two
16 that are a little newer, but it is a very nice state
17 of the art facility. It has all of the modern
18 facility arrangements to deal with contamination-to
19 prevent contamination, moving evidence through the
20 laboratory in an orderly manner, it's as state of
21 the art as a forensic laboratory gets.

22 Q Dr. Milligan, during his testimony, mentioned there
23 was filtered air--it was re-circulated through the
24 lab. Was he correct in saying that?

1 A Generally speaking, I would like to clarify a little
2 bit of that. The air is filtered. It's a hundred
3 percent pass through system. The air comes in from
4 the outside, it is heated or cooled depending on the
5 time of year, passed through the laboratory and then
6 exhausted. Any of the air that has gone through the
7 laboratory is not re-circulated back through the
8 laboratory it is actually exhausted. Unlike our
9 homes, where certain amount of air comes from the
10 outside, and then a certain amount of air is then
11 circulated through the air of heater and then ran
12 back through your home again, the laboratory is set
13 us so there is a hundred percent pass through. There
14 is no recirculation of any of the air in the
15 building. In fact, the engineers tells us that the
16 air flowing through the laboratory actually turns
17 over eight times every hour in the laboratory areas
18 and then six times every hour in our administrative
19 areas. Eight times every hour the space in the
20 laboratory is actually turned over for air, so it is
21 a very fresh, clean air system that goes through.

22 Q Are there safeguards in place to prevent evidence
23 from moving backwards through the system?

24 A Yes. The way our laboratory is set up, is that we
25 have a single flow through system where evidence

1 marches through the laboratory, in essence, in a
2 single direction. First the evidence comes in the
3 front door of our laboratory. It makes its way
4 through our serology testing. We analyze stains. We
5 look at all the bulk evidence and then once it
6 enters the DNA area it only goes through in one
7 direction. The DNA extraction takes place in one
8 area of the laboratory. The DNA amplification takes
9 place in another area of the laboratory and then the
10 final analysis with all of our instrumentation takes
11 place in the final area of the laboratory. It is a
12 single flow through system so you can't actually
13 swim upstream in the system and there is actually
14 several safeguards in our system to prevent any
15 inadvertent backflow in the system. One of which is
16 that every single space in our laboratory is
17 separated by a Fourier system, basically. If you
18 want to move from where the DNA is extracted into
19 the area where the DNA amplification takes place,
20 there is actually two sets of doors you go through
21 and you can't have both sets of doors open at the
22 same time. If there's a air flow difference or a air
23 pressure difference between the two rooms, you have
24 to have both doors shut before you can go into the
25 next area and those are magnetically controlled.

1 Q Is it possible, if you get into an area further on
2 back, to physically get back through the doors you
3 came through?

4 A No. The only way to physically go backwards is to—
5 there are some safeguards for fire escape and things
6 like that, where there's an override, but all of our
7 employees go through a single direction. They don't
8 go back through an opposite direction. Each room has
9 dedicated equipment and supplies for that room so
10 the equipment and supplies don't transfer from one
11 room to another, either.

12 Q Thanks, I have no further questions for you.

13 THE COURT: Cross examination?

14 CROSS EXAMINATION

15 BY MR. GABRY

16 Q Mr. Nye when did the (INAUDIBLE) start testing?

17 A Around some of our validation (INAUDIBLE) around
18 1997, I think. We started some of our case work
19 analysis in 1998 and 1999.

20 Q Did you have an operating protocol prior to the new
21 lab in 2001, I believe you said?

22 A Yes, we did.

23 Q So, if the time this testing was done, your
24 employees were operating under the protocol for the
25 new lab about, less than a year?

1 A Yes.

2 Q These are human beings that operate the equipment,
3 so the analysis, examine the evidence, is that
4 correct?

5 A Yes, they are.

6 Q Do you agree that human beings make mistakes?

7 A Yes, they do. We train extensively with all of our
8 employees. As I said before, our training is
9 typically a year to a year and a half and they have
10 to meet certain mild stones and markers and
11 competencies prior to actually conducting DNA
12 testing as well as the serological testing--

13 Q My question was, do you agree that human beings make
14 mistakes?

15 A Yes, they do.

16 Q Have human beings made mistakes in your lab--the new
17 lab since it began operation in 2001

18 A Again, you have to classify the type of mistakes
19 that you are quantization--

20 Q I'm asking you if these human beings in this process
21 have made mistakes?

22 A Yes.

23 Q What type of mistakes have you noticed and have had
24 to take corrective action for?

- 1 A Typographical mistakes, labeling mistakes, things of
2 that nature, nothing that would significantly affect
3 a case. We have--
- 4 Q Let's talk about labeling mistakes. What kind of
5 labeling mistake?
- 6 A Our case jacket materials have--we're required to
7 label them extensively with laboratory numbers,
8 initials, dates things like that--page numbers
9 through out, our documentation is very significant.
10 We are not talking about labeling mistakes--I'm not
11 talking about transposing one sample material with
12 another, I'm talking about making sure the labeling
13 is complete and accurate. Not making mistakes as far
14 as changes.
- 15 Q Have you ever encountered labeling mistakes on the
16 actual items being analyzed?
- 17 A No. No, we are very thorough on that.
- 18 Q How are these mistakes recorded?
- 19 A With respect to administrative--clerical type
20 mistakes?
- 21 Q With respect to the lab being able to identify where
22 there are problem areas and what needs--what
23 corrective--a corrective action log, do you maintain
24 one?
- 25 A No, we do not.

1 Q Why not?

2 A Maybe I should explain how we identify them and

3 explain how we correct them, if I can.

4 Q My question is why do you not maintain a corrective

5 action log?

6 A We keep our corrective action within the independent

7 case jacket materials. There is not a central log--

8 Q Mr. Nye, we understand that and we've heard that. My

9 question to you is, why do you not keep and maintain

10 a corrective action log?

11 A It is something that is not required of us and

12 again, if there is a mistake or corrective action on

13 a specific case, that would be documented

14 thoroughly within the case jacket material.

15 Q You maintain a quality control log?

16 A In what respects?

17 Q In respects to quality control of your operation?

18 A We contain quality control with respect to all of

19 our reagents and all of our supplies and all that

20 material is kept--every single reagent that is

21 prepared and every single reagent that is purchased

22 goes through quality control before we actually

23 utilize it on casework and we do have a log on all

24 that material.

- 1 Q Do you note in that log, mistakes or concerns that
2 arise relative to these reagents?
- 3 A No. All of what that is, is to make sure the
4 reagents is operating the way it is supposed to
5 operate—the way it is intended to operate, that it
6 is working within the specifications that the
7 manufacturer says that it needs to. That is all
8 maintained in the quality for assurance for reagents
9 and chemicals.
- 10 Q If I were to come in as an auditor and asked to see
11 your quality control log, would I not be able to see
12 in there, mistakes that had been made in the lab?
- 13 A No.
- 14 Q As an auditor, if I wanted to know what your error
15 rate was, would you have the ability to provide me
16 with documentation as to what the error rate of this
17 lab operating by human beings, is?
- 18 A Again, error rates are not something that is
19 calculated. I don't know if previous testimony
20 explained what the NRC-2 was--
- 21 Q Is your answer than, no, sir?
- 22 A Yes, we do not calculate an error rate for our
23 laboratory.
- 24 Q So, as an auditor, if I wanted to come in and ask
25 relative your error rate, basically what you're

1 telling me is that I would need to look through
2 every one of your case jackets individually to see
3 if an error was made, correct?

4 A That is actually what an auditor does. They come
5 through and pull case jackets and they review case
6 jackets and determine whether every case was
7 processed appropriately. That is done every single
8 year in our laboratory.

9 Q And they don't pull every case file do they, Mr.
10 Nye? They pull a random sample, correct?

11 A Yes, they do. They randomly pull them off the shelf
12 in a random manner, but also each and every lab--
13 each and every examination is technically reviewed
14 and administratively reviewed prior to reporting it
15 as well, so it is not just an independent scientist
16 reporting, it is actually reviewed by two other
17 scientists before it is reported.

18 Q What changes did you have to make in your operating
19 protocol once you began, first of all, the
20 changeovers from the old lab to the new lab.

21 A None, I don't believe.

22 Q As you began to operate in the new lab, what type of
23 changes in the operating protocol did you determine
24 needed to be made as the bugs got worked out in the
25 new lab?

1 A When we moved to our new laboratory from our old
2 laboratory, as part of our accreditation process, we
3 actually have to do some site specific testing.
4 Basically, it is taking your protocol from your old
5 facility and then working it through you same
6 protocol in your new facility, it's basically doing
7 a site specific test to make sure that your protocol
8 in the old facility works in the new facility and to
9 make sure that the move in the instrumentation did
10 not change how they operate and things of that
11 nature and that was done at the new facility.

12 Q And my question to you is as you begin to operate in
13 the new facility under the new protocol, what, if
14 any, changes needed to be made as you, I guess,
15 worked the bugs out?

16 A None.

17 Q So your operating under the exact same protocol as
18 you operated on in the old lab?

19 A To the best of my knowledge, yes.

20 Q Why do analysts wear gloves when they're, first of
21 all, processing evidence in, what you call, bulk
22 evidence. I think we refer--referred to it as the
23 biology lab. Why do you wear gloves?

24 A A major portion of that is that we're sensitive to
25 what we may receive from the evidence. We are

1 dealing with biological samples and biological
2 samples have an inherent danger in them in
3 transmitting diseases: AIDS, HIV, things of that
4 nature, so it is actually a protection measure for
5 ourselves as well as a protection measure from the
6 evidence.

7 Q Could we talk about the other part, the protection--
8 the minor contribution, I guess, in my you were
9 gloves?

10 A We don't want to contaminate the evidence ourselves
11 as well, and that is part of the process as well.

12 Q How would you contaminate the evidence if you didn't
13 wear gloves? Tell the jury, please.

14 A We would be handling the evidence with our bare
15 hands and when you handle evidence you handle it
16 fairly directly in the fact that sometimes--if you
17 are handling things like carpet or things of that
18 nature, you want to look down in the weave of the
19 fibers and everything, so you are handling it quit a
20 bit. You actually have to protect yourself from the
21 evidence as well as protecting yourself from
22 contaminating the evidence as well.

23 Q How would one, without wearing gloves, contaminate
24 the evidence?

1 A Again, your handling it with your hands, you have
2 DNA on your hands. You wouldn't want to leave your
3 DNA behind on the evidence.

4 Q Is it possible in the use of those gloves--do you
5 change gloves as you go through the process of
6 analyzing the evidence, making the cuttings,
7 performing the DNA amplification and the various
8 processes?

9 A Yes, we do.

10 Q What do you change gloves?

11 A We typically change gloves when we change to a
12 different piece of evidence. Typically what we do
13 is, if we are handling a particular piece of
14 evidence, let's say a shirt, on one case then we
15 move to another item on the exact same case, we
16 would typically change our bench--clean our bench
17 area--we work on bench paper, we would roll that up
18 and throw that away, change gloves and put a new
19 pair of gloves on and work on another piece of
20 evidence.

21 Q My question is, why? What can happen if you don't?

22 A Well, let's say, hypothetically speaking, that we
23 are working on a homicide and we have two pieces of
24 clothing that came from two individuals, you
25 wouldn't want to cross contaminate one piece of

1 evidence with another piece of evidence by not
2 changing your gloves.

3 Q You're aware that we are dealing with this case, at
4 least Dr. Milligan was dealing with case evidence
5 that accumulated under the procedure and, I guess
6 protocols we'll call them, in place back in 1969?

7 A Yes.

8 Q Obviously, back in 1969 the same safeguards you
9 exhibit in the lab, to the best of your knowledge,
10 weren't being exhibited in the field or in the
11 public health lab, were they?

12 A Again, I was only a year old in 1969. I'm not
13 exactly sure what the policies and procedures were
14 in 1969. My guess would be that people were not
15 nearly as sensitive to the receipt of biological
16 evidence and what type of things could occur, as far
17 as you contracting something from the evidence or
18 you leaving something behind. I only say that
19 because my father works in the health field, and my
20 experience from him, what types of improvements and
21 safeguards they have taken through their career.

22 Q When you say hypothetically, what you are basically
23 taking about is the handling of evidence, by a
24 person who has gloves, rubber, latex, whatever,
25 handles that evidence may very well end up absorbing

1 or transferring to themselves some of the human
2 cells that may be on that piece of evidence,
3 correct?

4 A That is possible, yes.

5 Q In fact, then taking, without removing that glove
6 and then grabbing another piece of evidence could
7 very well transfer those human cells from one object
8 to another, correct?

9 A Again, that is entirely possible with in the realm
10 of possibility, but this evidence in this particular
11 case does not suggest that.

12 Q You mention that Ms. Thivault--did you actually do a
13 time line, you didn't give us specifics dates, you
14 gave us a few, but when this whole process arose,
15 you raised this concern with the lab?

16 A The investigators that were investigating the case
17 had indicated that, through their investigation and
18 trying to make some sort of connection with John
19 Ruelas with the Mixer homicide, had indicated to us--
20 --that was the first knowledge that we actually had
21 of that was the we had the John Margaret--the John
22 Ruelas, Margaret Ruleas homicide case in our
23 laboratory 'round about the same time that we were
24 analyzing the Jane Mixer case. As part of that

1 investigation, they actually requested us to go back
2 and review our records on those cases.

3 Q Would you agree with me that an individual wearing a
4 T-shirt is apt to shed human cells into that T-
5 Shirt?

6 A Yes, I would.

7 Q I understand that at the time that Dr. Milligan
8 would have been examining the Mixer evidence, the
9 connection by the way of the name Ruelas coming up,
10 that would not have come up until what, August,
11 maybe, I believe, 2004, when there was this COTIS
12 hit?

13 A Yes, it was significantly later than the time that
14 it was actually analyzed. I didn't actually go
15 through that late in the processing. I really
16 focused on March, April, May of 2002, but it came by
17 significantly later, after the analysis was
18 complete.

19 Q In looking at your time line, can you tell me if
20 there were any times in which, after Dr. Milligan
21 had made his cuttings in the bulk evidence room and
22 he began to process, remove from--once the cuttings
23 are made, removed from the bulk room, ultimately
24 they are in the DNA refrigerator laboratory,
25 correct?

1 A Yes, they are.

2 Q That would be the same laboratory were the cuttings

3 Sara Thivault had taken back in January 2002 would

4 have been placed, is that correct?

5 A In--

6 Q The same lab.

7 A In February 2002.

8 Q She took hers in February 2002?

9 A Yes, she completed her serological testing on her

10 bulk evidence in February 20, 2002 and she began her

11 DNA testing, approximately February 27, 2002.

12 Q So, the items that--she had done the examination on

13 the articles that ultimately were learned to be

14 connected to John Ruelas, taken those samples that

15 she wished to subsequently analyze further and those

16 were being stored in the refrigerator of the DNA

17 room as of 2-27?

18 A Yes. Well, they went to the DNA room refrigerator on

19 2-21 of 2002, she removed them from the DNA

20 refrigerator to start her testing on February 27,

21 2002.

22 Q Meanwhile, Dr. Milligan has removed the evidence

23 from the property room and is examining that in the

24 biology lab on March 21, 2002?

1 A Right. Basically, Sara processed her evidence in the
2 serology lab, which is a separate room within our
3 laboratory, a month, give or take a couple days,
4 prior to when Dr. Milligan processed the Jane Mixer
5 homicide in the serology lab.

6 Q Let's make sure I understand. I call it the biology
7 room, it's been referred to as--the bulk evidence
8 property room is the entry point to the lab?

9 A Yes.

10 Q I remove it and I now examine it--we've heard it
11 referred to as a biology lab, that's the same place
12 that you are referring to as the serology lab?

13 A Yes. Biology and serology are synonymous.

14 Q At what point in time, looking at your time line, do
15 Sara Thivault and Steven Milligan then begin to work
16 on their samples in the DNA lab?

17 A Sara began working on her samples in the DNA lab,
18 February 27, 2002. Dr. Milligan did not begin his
19 testing in the DNA lab until the later part of March
20 2002--26th--March 26, 2002.

21 Q So, he actually got a jump on--Ms. Thivault got
22 going a month before Dr. Milligan, is that--a month
23 and a day?

24 A For the serological testing, yes.

1 Q When Sara Thivault examines the evidence, makes her
2 cuttings, places them in the micro tubes?

3 A Yes.

4 Q Are those micro tubes ever sterilized on the outside
5 or heat sensitized after the DNA is put in them?

6 A No.

7 Q Or when the cutting is put in them?

8 A No. When we purchase them from the manufacturer they
9 are sterilized. They are packaged sterilized and
10 each analyst within the laboratory actually has
11 their own sub-sample of tubes, so the tubes that
12 Sara would have used would not have been available
13 for Dr. Milligan to have used.

14 Q Certainly, but the tube that she uses as she
15 analyzed the bulk evidence, as she is working with,
16 say the T-shirt, or any other particular item that
17 she reviewed, as she makes her cuttings this is
18 right in the serology area and I believe you
19 mentioned typically, clean sheet of brown paper and
20 typically the area is cleaned off, correct?

21 A Yes, each--

22 Q So then she takes her cutting from that area and the
23 she, what? Does she take that from that area and
24 walk across the lab to put it in a tube, or is that
25 micro tube--what is that, a really small test tube?

1 A It's a really small test tube. It holds about a
2 milliliter and a half and it is capped. There is a
3 cap that is attached right on the tube.

4 Q Is it right there?

5 A Yes, each laboratory analyst has an independent area
6 within the laboratory that they work. They have a
7 bench area that is assigned to them. That bench area
8 is complete. They can do 90 plus percent of their
9 screening of bulk evidence in their bench area. They
10 have their own bench area complete with their own
11 utensils, their own tools, their own writing
12 materials, tablets. Everything they need, generally
13 speaking, right there at their bench, so they are
14 working in one small area. There is not a lot of
15 moving around in a laboratory, to get to different
16 areas to get different things. You work at your
17 bench.

18 Q So this T-shirt is picked up and moved around and
19 examined under a poly-light for blood spots, the
20 items that she is going to use are right there?

21 A Most of the items are right there. Sometimes you
22 need to move around and use other items within the
23 laboratory, depends on the type of testing that she
24 did. My understanding is the type of testing that
25 she did, she quit likely did it right at her bench.

1 Q You make the cutting and you put it in the tube
2 right there?

3 A Yes.

4 Q Once you seal that tube, you don't do anything to
5 sterilize, to clean the outside of the tube. You
6 then just store it?

7 A Yes.

8 Q It remains in that condition until such time that
9 it's--if it's removed right then to the DNA
10 refrigerator, or it might be stored in the biology
11 refrigerator until some other evidence is put in
12 this little grouping, because the evidence is all
13 kept together in these groupings?

14 A The evidence is all kept together in individually
15 capped tubes and the tubes are labeled independently
16 with an identifier. The evidence is kept separate
17 from any reference materials that might be submitted
18 on the case as well.

19 Q In looking at your time line then and realizing that
20 Sara Thivault had start--if I remember your direct
21 testimony, had started an analysis before Dr.
22 Milligan, but Dr. Milligan actually finished his DNA
23 analysis before she did?

24 A Yes.

1 Q At what points in time were they both working on
2 their evidence in the DNA lab?

3 A The--

4 Q Where their paths crossed.

5 A Well, I wouldn't say that their paths cross. The DNA
6 portion of the laboratory is set up exactly like our
7 serology portion of our laboratory in that each
8 person has a specified work area that they work
9 within. It is their bench within a laboratory. They
10 have a full set of equipment. They have a full set
11 of tubes that they use, utensils that they use,
12 pipettes that they use. They work at their bench.
13 Any areas that they work from that are away from
14 their bench. Everything is actually disposable and
15 cleaned after each and every use.

16 Q In looking at your time line, when are they both in
17 the lab working on the evidence at the same time?

18 A The only point that they actually worked closed to
19 the same time frame would be--Sara was making some of
20 her dilutions--when you quantify DNA there is a
21 certain range--

22 Q That's okay, we've heard a lot about what happens. I
23 would like to know what point in time and where in
24 the process were they working on the DNA in the lab
25 within the same day?

- 1 A If I could review my notes--
- 2 Q Please.
- 3 A --for just a moment. Everything is actually
- 4 different by at least one day. Sara was making
- 5 dilutions, preparing for her amplifications on the
- 6 25th of March and the 29th of March. Dr. Milligan is
- 7 working on his samples the 26th, 27th, 28th of March
- 8 and April 4th of 2002. They actually don't appear to
- 9 have them out on the same day. They are separated by
- 10 a day, at that point, in different areas of the
- 11 laboratory with different equipment.
- 12 Q Where does Sara Thivault work in the lab?
- 13 A She works at a specific bench area in a specific
- 14 area of our laboratory, it would be--if I have my
- 15 directions correct--I'm not sure if I have my
- 16 orientation correct, but it would be in the South
- 17 West portion of the laboratory, I believe--of the
- 18 DNA extraction area.
- 19 Q Where is that in relationship to Dr. Milligan's?
- 20 A I believe he is approximately two to three benches
- 21 away from where Sara Thivault works.
- 22 Q Which is about how far? Is it from me to you?
- 23 A About ten to fifteen feet apart, probably.
- 24 Q Less than me to you?
- 25 A Maybe a little bit.

1 MR. GABRY: Thank you, your Honor.

2 THE COURT: Any re-direct?

3 RE-DIRECT EXAMINATION

4 BY MR. HILLER

5 Q You spoke to Mr. Gabry about the corrective action
6 logs and you mentioned that they were not required.
7 Can you explain, please, what is required of you for
8 accreditation purposes by the ASCLD, American
9 Society of Crime Lab Directors?

10 A Yes, any time that we have to have corrective
11 action, say for instance if there was a mistake made
12 in the laboratory, through out protocol we are
13 required to document that thoroughly through out our
14 case jacket. What Mr. Gabry is asking is if we keep
15 a central log of all corrective actions made, and we
16 do not because it is pertinent to a specific case
17 so, it is documented well within that specific case,
18 we just don't keep a central log. We are actually
19 not required to, per our protocol and we are not
20 requited to per our ASCLD accreditation process.

21 Q Are there any national standards that actually
22 indicate that keeping a central record log is not a
23 valid measure of lab quality?

24 A No. Again, it is specific to a particular case and
25 whether a mistake or error was made on a specific

1 case. The--as I was alluding to before, there is a
2 publication called the National Research Counsel 2
3 and that was published in 1996 to address issues
4 surrounding forensic DNA analysis. The National
5 Research Counsel is part of the National Academy of
6 Sciences and it was published to make
7 recommendations from scientist around the country,
8 some of them forensic scientists, some of them not,
9 in respect to forensic DNA testing. They actually
10 indicate producing an error rate for forensic
11 testing, is not a measurable thing that you can
12 actually do. The error rates occur at such a small
13 rate that it is not measurable and it is also
14 difficult to actually conduct that type of
15 measurements. They actually suggest not to do an
16 error rate.

17 MR. HILLER: Thank you, I have nothing
18 further.

19 THE COURT: Any thing further, Mr. Gabry?

20 MR GABRY: No thank you, your Honor.

21 THE COURT: You may step down, sir. You are
22 excused.

23 (witness excused at 9:01 a.m.)

24 MR. HILLER: Your Honor, may we approach?

25 THE COURT: Yes.

1 (bench conference at 9:01 a.m.)

2 (Court resumes at 9:02 a.m.)

3 MR. HILLER: Crystal Harrison, your Honor.

4 THE COURT: Ma'am come forward, face the
5 clerk and raise your right hand. You can stop right
6 there.

7 THE COURT CLERK: You do solemnly swear to
8 tell the truth, the whole truth and nothing but the
9 truth?

10 MS. HARRISON: Yes, I do.

11 (witness sworn at 9:02 a.m.)

12 THE COURT CLERK: Have a seat right there.

13 THE COURT: State and spell both your first
14 and last names.

15 THE WITNESS: Crystal Harrison. C-r-y-s-t-
16 a-l H-a-r-r-i-s-o-n.

17 THE COURT: Okay. Prosecutor.

18 MR. HILLER: Thank you, your Honor.

19 CRYSTAL HARRISON

20 DIRECT EXAMINATION

21 BY MR. HILLER

22 Q Ma'am by whom are you employed?

23 A Washtenaw County Sheriff Department.

24 Q In what capacity?

25 A Visiting mail person.

- 1 Q Are you enlisted? Are you a deputy or a corrections
2 officer?
- 3 A Correction officer.
- 4 Q And you work at the county jail?
- 5 A Yes.
- 6 Q Do you have anything to do with mail that leaves the
7 jail from prisoners or comes into the jail to
8 prisoners?
- 9 A Yes.
- 10 Q What do you do with that mail?
- 11 A I collect all the incoming and outgoing mail.
- 12 Q Are there times where you collect mail and route it
13 other than directly to the prisoners or directly to
14 the US mail system?
- 15 A Yes.
- 16 Q Are there times where you route mail to criminal
17 investigators?
- 18 A Yes.
- 19 Q In particular, did you collect mail to and from Gary
20 Leiterman?
- 21 A Yes.
- 22 Q What did you do with the mail that you collected?
- 23 A All of his incoming and out going mail was sent to
24 the detectives.
- 25 Q How was that done?

1 A I collected his mail and then put it in the
2 detectives mailboxes.

3 Q Other than doing that, sis you review the mail in
4 any way?

5 A All incoming mail is reviewed. I open it and check
6 to make sure there is no contraband and send it to
7 the inmate.

8 Q Did you review Mr. Leiterman's outgoing mail?

9 A No, I did not.

10 MR. HILLER: I have no further questions,
11 Mr. Gabry may.

12 THE COURT: Cross examination.

13 CROSS EXAMINATION

14 BY MR. GABRY

15 Q Ms. Harrison are the people who's mail that you are
16 opening made aware of the fact that you are opening
17 their mail.

18 A I open all inmates mail so their--yes they know that
19 I open their mail. Everything is opened to check for
20 contraband before it is given to the inmates.

21 Q When they write a letter to their loved ones or to
22 their attorney or to their priests, are they
23 notified that their mail is being opened?

1 A I don't open that mail. I don't know if the
2 detectives notify them or not. I don't open that
3 mail.

4 Q So, you don't even open the envelope and copy it?

5 A No, I don't.

6 Q So, that causes--that explains something. The delay
7 is then--where does the mail go after--you, I guess,
8 stop it from going out in the mail, instead of
9 letting it go through the mail, you physically grab
10 a hold of the letters and without opening them, you
11 put them somewhere?

12 A I put them in the detectives mailbox, yes.

13 Q Do they ever give them back to you?

14 A Yes. They put them in a mailbox labeled "Jail".

15 Q So, you don't know what they do with them. You put
16 them there and they disappear for a while and then
17 they come back to you?

18 A That's correct.

19 Q And then you mail them out?

20 A I mail them out or bring them in depending if it is
21 out going or incoming mail.

22 Q How much of a--how long does this process usually
23 take? What's the turnaround?

24 A It could be a couple of days, it could be a few
25 weeks, it just depends.

1 Q Do you turn over to the detective's letters to the
2 attorney?

3 A I turn over all incoming and outgoing mail.

4 Q So letters written to me, by my client, would be
5 turned over to the police?

6 A All incoming and outgoing mail.

7 Q Incoming mail--are the families advised that mail is
8 going to be reviewed?

9 A Sir, all mail is review when it is--I don't--I don't
10 know if the families are advised. No ones asked me
11 if I open the mail, but I open all incoming mail.

12 Q What I am asking you, and maybe that is the answer,
13 that you don't know, is as a corrections officer,
14 are you aware if the Sheriff puts out any kind of--
15 in a visitors guide book or an inmate handbook or
16 anything like that, that advises these parties that
17 the mail is not secure?

18 A I don't know.

19 Q Who asked you to relay Mr. Leiterman's mail?

20 MR. HILLER: Objection your Honor.

21 BY MR. GABRY:

22 Q All right. Who asked you to forward to the
23 detectives, Gary Leiterman's mail? Who specifically.

24 A Detective Hilobuk.

25 Q Jeremy Hilobuk?

1 A Yes.

2 Q Does he have a box there or is it a box for the

3 State Police?

4 A There is a box for Law Net there that--

5 Q Law Net?

6 A Yes.

7 MR. GABRY: Thank you, I have nothing

8 further.

9 THE COURT: Anything further?

10 MR. HILLER: Nothing further.

11 THE COURT: Thank you, ma'am. You may step

12 down, you're excused.

13 (witness excused at 9:09 a.m.)

14 MR. HILLER: We will call Patrick Bell.

15 THE COURT: Face the clerk, raise your

16 right hand and be sworn.

17 THE COURT CLERK: Do you solemnly swear or

18 affirm that the testimony that you are about to give

19 will be the truth, the whole truth and nothing but

20 the truth?

21 MR. BELL: I do.

22 (witness sworn at 9:09 a.m.)

23 THE COURT CLERK: Have a seat right up

24 there.

1 THE COURT: State and spell your first and
2 last names.

3 THE WITNESS: Patrick Bell, P-a-t-r-i-c-k
4 B-e-l-l.

5 PATRICK BELL

6 DIRECT EXAMINATION

7 BY MR. HILLER

8 Q By whom are you employed?

9 A Washenaw County Sheriff's Department.

10 Q In what capacity?

11 A As a detective sergeant.

12 Q How long have you been a deputy sheriff for Washenaw
13 County?

14 A A little over thirteen years.

15 Q Sergeant Bell, as part of your duties in the
16 detective bureau, do you have occasion to review
17 prisoner mail?

18 A Yes, I do.

19 Q In particular, did you have occasion to receive any
20 mail sent by Gary Leiterman or sent to Gary
21 Leiterman?

22 A Yes, I did.

23 Q Let me ask you first of all. Letters that Mr.
24 Leiterman sent to his lawyer, are those reviewed?

25 A No, they are not.

1 Q Now, when you received mail, either sent to Mr.
2 Leiterman or sent by Mr. Leiterman, what did you do
3 with that mail?
4 A I would open that mail, if it wasn't opened. I would
5 copy the envelope and I would copy the letters front
6 and back and I would forward them on to Detective
7 Hilobuk.
8 Q Did you spend a lot of time reading that mail?
9 A No, I didn't.
10 Q I would like to show you People's purposed exhibits
11 79 and 80, can you tell me, if you can, whether or
12 not you recognize those?
13 A Yes, it appears to be some of the letters that I
14 copied.
15 Q One of those, I believe it was 79, was letters that
16 were offered by Gary Leiterman, is that correct?
17 A Yes.
18 Q 80 is a packet of letters sent to Gary Leiterman.
19 Are they sent by one particular person?
20 A They all appear to just have a last name of
21 Leiterman and if I recall correctly, that could have
22 been his wife, Solly. I am not sure, it has been a
23 long time.

1 Q Thank you, and all of these letters that you have in
2 front of you that have been grouped together as 79
3 and 80, what would you do with these?

4 A I would copy the envelopes; I would copy the letters
5 front and back and would forward them on to
6 Detective Hilobuk.

7 Q The copies?

8 A Copies and I would send the letters on to their
9 original destination.

10 Q Either down to the jail, to Mr. Leiterman or out
11 into the US mail?

12 A Correct.

13 MR. HILLER: Thank you, I have no further
14 questions

15 THE COURT: Cross examination?

16 MR. GABRY: No questions, your Honor.

17 THE COURT: You may step down, you are
18 excused, sir.

19 THE WITNESS: Thank you.

20 (witness excused at 9:14 a.m.)

21 MR. HILLER: Jeremy Hilobuk.

22 THE COURT: Stop there, face the clerk and
23 raise your right hand.

24 THE COURT CLERK: Do you solemnly swear or
25 affirm that the testimony that you are about to give

1 will be the truth, the whole truth and nothing but
2 the truth?

3 MR. HILOBUK: I do.

4 (witness sworn at 9: 15 a.m.)

5 THE COURT CLERK: Have a seat right up
6 there.

7 THE COURT: State and spell you first and
8 last name.

9 THE WITNESS: First name is Jeremy, J-e-r-
10 e-m-y last name is Hilobuk H-i-l-o-b-u-k.

11 JEREMY HILOBUK

12 DIRECT EXAMINATION

13 BY MR. HILLER

14 Q By whom are you employed, sir?

15 A With the Washenaw County Sheriff's Department.

16 Q In what capacity

17 A I am a detective assigned to the Law Net major case
18 team.

19 Q How long have you been a deputy sheriff for Washenaw
20 County?

21 A I'll have ten years in September.

22 Q How long have you been a detective?

23 A I have been a detective for four years. I started in
24 May of 2001.

25 Q What is the Law Net major case team?

1 A It is a State Police run concept team that has local
2 agencies and State Police assigned to it. There's a
3 couple different teams we have. There is a narcotics
4 team, the major case team where we investigate
5 either cold cases or active homicide cases--any
6 thing that is major going through Washenaw County,
7 and they also have a auto theft unit out there.

8 Q Have you been providing any assistance with respect
9 to the investigation to the homicide of Jane Mixer?

10 A Yes, I have.

11 Q Does any of that assistance involve collection of
12 mail to and from Gary Leiterman?

13 A Yes.

14 Q From whom would you receive--or from whom did you
15 receive mail from Mr. Leiterman or to Mr. Leiterman?

16 A Going to the jail, a corrections officer, Crystal
17 Harrison. I asked her to flag the mail for us. She
18 would either give the mail to myself or detective
19 sergeant Pat Bell and we would get it from her.

20 Q Did you receive copies of letters from Pat Bell?

21 A Yes, I did.

22 Q I would like to show you People's purposed exhibits
23 79 and 80. I would like you to inspect those,
24 please, and tell me if you recognize them?

1 A Yes, I recognize these as being letters from Gary
2 Leiterman or to Gary Leiterman.

3 Q The ones that are to Gary Leiterman are they from
4 one particular person?

5 A Yes, from his wife, Solly Leiterman.

6 Q Did you give those letters to any one else? Did you
7 give those to another police officer?

8 A Yes, I did. I gave them to the Lansing lab and--

9 Q Do you know who--do you know who at the Lansing lab
10 you gave them to?

11 A Yes, and the name escapes me right now.

12 Q In what unit does he work?

13 A The handwriting analysis.

14 Q Would that be Lieutenant Riley?

15 A That sounds correct, yes, Lieutenant Riley.

16 MR. HILLER: Your Honor, I would move for
17 the admission of 79 and 80.

18 THE COURT: Any objection?

19 MR. GABRY: Yes, your Honor, I have an
20 objection. Are we going to approach the bench?

21 THE COURT: If you need to.

22 (bench conference at 9:20 a.m.)

23 (Court resumes at 9:21 a.m.)

1 THE COURT: I understand your objection as
2 to the relevance of the contents of the letters, is
3 that correct?

4 MR. GABRY: That is correct, your Honor.

5 THE COURT: All right. I am going to admit
6 prosecution's exhibits 79 and 80 for the limited
7 purpose of being used as the foundation for--in
8 connection with handwriting expert testimony which I
9 understand you intend to offer, is that correct?

10 MR. HILLER: That is correct, your Honor.

11 THE COURT: The contents won't be admitted,
12 they are not relevant. The contents as to what was
13 said aren't relevant to this case and they won't be
14 going to the jury for that purpose.

15 MR. HILLER: Thank you, your Honor. I have
16 no further questions, detective, thank you.

17 THE COURT: Cross examination?

18 MR. GABRY: Yes, thank you.

19 CROSS EXAMINATION

20 BY MR. GABRY

21 Q Detective--it's detective Hilobuk, right?

22 A Yes.

23 Q Detective Hilobuk, when did you transport these
24 letters to Lieutenant Riley at the Michigan State
25 Police lab in Lansing?

1 A I transported them last night.

2 Q Last night?

3 A Yes.

4 Q How long have you had them in your possession?

5 A I've been collecting his mail ever since he has been
6 in the county jail. There was another set of letters
7 that were transported to the Lansing lab which was
8 probably half of the letters, approximately a week
9 ago.

10 Q Were these letters--so all--these letters that have
11 been marked here, none of them have been sent to the
12 Michigan State Police lab prior to June 10, 2005?

13 A Not that I sent up. I also made copies for the other
14 detectives in charge so I don't know if they had
15 given any letters or not.

16 Q Who instructed you to send them up last night?

17 A The prosecutor.

18 MR. GABRY: Thank you, nothing further,
19 your Honor.

20 THE COURT: Anything further?

21 RE-DIRECT

22 BY MR. HILLER

23 Q Just to clarify, Detective Hilobuk, the--you
24 indicated that there were some letters sent up about
25 a week ago?

1 A Yes.

2 Q Are those letters included in those that went up

3 last night as well?

4 A Yes, they are. The exhibit 79, I'd say, maybe half

5 of those--of these letters in here, were the ones

6 that were sent up last week--about half of them.

7 Q The remainder of that packet and number 80 is what

8 you took up last night?

9 A That's correct.

10 MR. HILLER: Nothing further.

11 THE COURT: Anything further, Mr. Gabry?

12 MR. GABRY: No, your Honor.

13 THE COURT: You may step down, you are

14 excused, sir.

15 THE WITNESS: Thank you.

16 (witness excused at 9:25 a.m.)

17 THE COURT: Call your next witness.

18 MR. HILLER: Fred Pacheco, your Honor.

19 THE COURT: Sir, come up here if you would.

20 Stop there, face the clerk and raise your right

21 hand.

22 THE COURT CLERK: Do you solemnly swear or

23 affirm to tell the truth, the whole truth and

24 nothing but the truth?

25 MR. PACHECO: Yes, ma'am.

1 (witness sworn at 9:25 a.m.)

2 THE COURT CLERK: Have a seat right up
3 there.

4 THE COURT: Sir, state and spell both your
5 first and last names.

6 THE WITNESS: My first name is Fredrick and
7 my last name is Pacheco. My first name, F-r-e-d-i-c-
8 .k my last name, P-a-c-h-e-c-o.

9 THE COURT: Okay, prosecutor.

10 MR. HILLER: Thank you, you Honor.

11 FREDRICK PACHECO

12 DIRECT EXAMINATION

13 BY MR. HILLER

14 Q Good morning, sir.

15 A Good morning.

16 Q Where do you--in what community do you currently
17 live?

18 A I live in Westland, I have been there for thirty-
19 seven years.

20 Q Same house?

21 A Yes, sir.

22 Q What do you do for a living?

23 A I am retired. I was a security officer for Cadillac
24 division for thirty-three years.

25 Q When did you start at Cadillac?

1 A When I got out of the air force. I was in the air
2 force for eight years. I started there in 1953.

3 Q When did you retire?

4 A I retired in '68.

5 Q I'm sorry, sir. How many years did you say you
6 worked at Cadillac?

7 A Thirty-three.

8 Q You said you started in '53 and you said you retired
9 in '68.

10 A I'm sorry, '86, my error. My memory isn't so good
11 anymore. By the way, I am 76, remember that.

12 Q Mr. Pacheco--

13 A Yes, sir.

14 Q --when you worked at Cadillac did you work at one
15 plant or did you move to different plants?

16 A Well, they had several plants and when I became a
17 supervisor, I worked them all. Some on the East
18 side, some on the West side, some in Livonia, I
19 worked them all.

20 Q How long were you a supervisor there?

21 A Let's see, about ten years.

22 Q Now, Mr. Pacheco, I want to ask you some questions
23 about your family.

24 A Sure. I would like to tell you one more thing before
25 you answer that. I am retired but I am still

1 working. I work for a funeral home. I've been
2 working for McCain Funeral Home for seventeen years.
3 I don't have nothing to do with the bodies, but I
4 get death certificates signed, I go to doctors
5 offices and go to city clerks offices and this sort
6 of thing. I don't do that anymore; I just sit in the
7 funeral home and answer the phone.

8 Q You've been doing that for the past seventeen years?

9 A Correct.

10 Q All right. Mr. Pacheco, did you have any brothers or
11 sisters?

12 A I come from a large family. I had three brother,
13 four sisters, my mother, dad and me make ten. They
14 are all deceased except for my one sister. She is
15 living in Mount Pleasant.

16 Q What is her name?

17 A Marie Morris.

18 Q Did you have a sister by the name of Margaret?

19 A Yes, sir.

20 Q What was Margaret's married name?

21 A Ruelas.

22 Q What were your brother's names?

23 A Robert, James Lee, and Gilbert, my younger brother.

24 Like I said, they are all deceased.

25 Q When did Robert pass?

1 A He passed in--let's see, just a minute, I brought it
2 just in case I didn't remember.

3 Q Are you going to look at something to help refresh
4 your memory?

5 A Yes. Yes. I brought--

6 Q What is it?

7 A They handed it out in the funeral. Yeah he passed
8 November 2, 1994.

9 Q What you are looking at there is a card from his
10 funeral?

11 A From the funeral home, yes.

12 Q Okay, all right. Thank you.

13 A His name, where he was born, where he was living.

14 Q Where was he living when he died?

15 A Battle Creek. I don't know the address, I don't
16 remember. He is buried there too, by the way. At
17 Fort Custard.

18 Q He's buried at Fort Custard?

19 A Yes.

20 Q So he is a Veteran?

21 A Oh yes, he is--all of my brother's were in the
22 service. My two older brothers' were in the army and
23 my younger brother and I were in the air force.

24 Q Do you know if your brother used the V.A. Hospital
25 in Battle Creek? Did he go to the V.A. Hospital--

1 A Oh, yes, a lot. He had a--he had a terrible problem,
2 service connected.

3 Q All right. How long have James and Gilbert been
4 gone?

5 A Gilbert's been gone--I can't--a number--at least
6 twenty years and my brother James has been gone a
7 long time too, at least fifteen years or more. They
8 have both been gone a long time. I will tell you
9 that. I didn't look it up for them, but I did for
10 Bob.

11 Q You indicated that you were a security guard for
12 Cadillac?

13 A Yes.

14 Q A security officer?

15 A Yes, sir.

16 Q Were you required to carry a firearm?

17 A No, sir. I understand they had firearms but we
18 weren't allowed to--we didn't have to carry them.

19 Q Did you own any firearms?

20 A Yes, I still do. I own a 22 rifle and a shot gun.
21 They are in my house and I told the detectives that
22 when they came there. As a matter of fact, they
23 wanted to serial number off of the 22 and I gave it
24 to them.

1 Q Did you--when did you--do you remember when you got
2 that rifle?

3 A It's been so long I can't remember, sir, I couldn't
4 tell you. I've had it a long time. It sits in the
5 closet.

6 Q Did you ever own a hand gun?

7 A Yes. I had a 38 charter arms and it was registered
8 with Westland Police and when my sister and her
9 husband bought a business out in Alorton, I gave it
10 to them--transferred ownership to them. I told the
11 detectives this. It was all legal. I transferred it
12 through the police department.

13 Q Did you ever own a 22-caliber handgun?

14 A No. I never owned any handgun except for that one
15 and it was a 38 charter arm, six shot.

16 Q You never had a 22-caliber Derringer.

17 A Oh, yes. Excuse me. What happened was, when I was a
18 youngster and we lived in Detroit, my neighbor who
19 was an older man and owned the houses--there was a
20 huge rat on his porch one day and he told me--he
21 yells to me that there was a huge rat on my porch
22 and I can't get the door opened, so I opened the
23 window up on the second floor and I put the 22-rifle
24 out and I blew his head off. He was so grateful that
25 he gave me this old 22--this old--what do you call

1 it--a pistol that you could hold in the palm of your
2 hand it was so small. So, I kept it and it pearl
3 handles on it. I kept it for years and had it locked
4 up in a box. When I went into the service, my
5 brother, I guess my younger brother, got into the
6 container, got the pistol and wanted to show it off
7 so he got it and the police took it away from him.
8 They never--of course by the time I got out of the
9 service it was gone. I never got it back. It was
10 really a (INAUDIABLE) it was worth a lot of money.
11 It was a good gun.

12 Q In your younger brother was which of the three?

13 A Gilbert.

14 Q Gilbert?

15 A Yes, sir. He died years ago. He drank all the time.
16 He wouldn't stop. He stopped now.

17 Q Your sister Margaret.

18 A Yes, sir.

19 Q Did she have a son by the name of John?

20 A Yes, sir.

21 Q In the late '60's do you know where they lived?

22 A I think they lived in Detroit somewhere but I am not
23 sure, I don't remember the address. I think it was
24 Second and--between Second and--somewhere on second.
25 In Detroit, though, I know that. It has been so long

1 I don't remember the address. It was an apartment
2 building. It wasn't a home, ya know--a private home.
3 It was an apartment building. At the time her
4 husband was there--living there with her, I guess.
5 Q I'm sorry.
6 A Her husband was living there with her at the time, I
7 guess, the time that Johnny was born.
8 Q Do you--do you--do you remember what year Johnny was
9 born in?
10 A No, sir, I don't.
11 Q All right.
12 A I didn't have too much to do with him. As far as I'm
13 concerned he was strictly undesirable. I kept him
14 far from me and I told my sister to get away from
15 him, he was going to harm her, and he did.
16 Q He ended up killing her?
17 A Yes, sir. He beat her to death.
18 Q When did that happen?
19 A It happened a few years ago. I don't remember the
20 exact date. The Jackson Police called me at home and
21 told me that she was deceased and I said that I bet
22 I knew who did it. She said, yes, sir, she said it
23 was her son Johnny and we have him locked up. I
24 said, throw the key away. Anyway, they called me to
25 let me know and where I work I had them send a

1 hearse out there to pick her up and bring her body
2 to the funeral home so she could be taken care of.
3 Q Did Margaret also have a daughter name Ramona?
4 A Yes. She--my sister, Margaret had many children.
5 Some I don't even know because I understand she left
6 them in the hospital or left them--she wasn't a good
7 mother. I hate to say this about my sister, but she
8 wasn't.
9 Q Do you see Ramona here today?
10 A Yes. She is out in the hall.
11 Q Mr. Pacheco, I'm sorry to have to ask you this, but
12 I need to ask you. Did you have anything to do with
13 the murder of the women by the name of Jane Mixer?
14 A What was the name, sir?
15 Q Jane Mixer.
16 A I never even heard of her. No, sir, I don't know
17 who--I haven't hear of that name.
18 Q Did you have anything to do with placing a body of a
19 woman in a cemetery in Denton? Do you know where
20 Denton is?
21 A No, sir, I do not.
22 Q Did you have anything to do with placing the body of
23 a woman in a cemetery back in the late '60's?
24 A No, no, sir.
25 Q Thank you sir.

1 MR. HILLER: I don't have any further
2 questions, Mr. Gabry might.

3 THE COURT: Cross examination.

4 MR. GABRY: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. GABRY

7 Q Good morning Mr. Pacheco.

8 A Good morning, sir.

9 Q Just to clarify a couple of things that you
10 testified to. When you mentioned that the charter 38
11 you had transferred to your sister that was a
12 different sister than Margaret, correct?

13 A Yes. That was Marie Morris. My sister is still
14 living in Mt. Pleasant. She had a business up there
15 called the Alorton Inn, a tavern and a restaurant in
16 case they needed it 'cause sometime they get
17 characters--any place of business has problems at
18 one time or another so I gave her the gun for
19 protection.

20 Q I just wanted to make sure that wasn't Margaret,
21 that was--

22 A No--no--

23 Q That was Marie and her husband--

24 A --I wouldn't give her no handgun, no--

1 Q Back then when you were talking about you thought
2 they lived in Detroit in an apartment building--
3 A Yes, sir.
4 Q They consisted of, the young boy, Margaret and her
5 husband, you mentioned?
6 A That's what--I figure--I didn't see much of him--
7 Q Who is he?
8 A --I think part of Johnny's problem was a father
9 because he was a really character.
10 Q Who was he? What's his name?
11 A I got to think. I can't remember his first name. I
12 know he died a violent death in Detroit. He was--my
13 brother called me at work when I was in Cadillac and
14 told me that he was found in a alley and had been
15 hit in the head with a blunt instrument, probably a
16 hammer, rolled up in a blanket, they spread gas on
17 it and burned him up. I think he probably caused his
18 own trouble because I think every time I heard, he
19 was always doing something: stealing mail out of
20 mailboxes, taking peoples money, all kinds of
21 things. He was always up to the wrong thing.
22 Q That would have been David Ruelas, wouldn't it?
23 A That's it. That's it--thank you. I couldn't
24 remember. That's it, David.
25 Q He was a live back in 1969 when his boy was younger?

1 A Yes, I believe so, yes. It's been a long time. He
2 has been gone a long time because my brother has
3 been gone a long time 'cause I was working at
4 Cadillac when he called and told me.

5 Q Did Robert end up suffering from some mental
6 problems at some point?

7 A Let me tell you about Robert, my older brother. He
8 was in the army back in World War II, just like my
9 brother Lee, they were both in the Army. He was
10 going overseas and they were going to Lady. They
11 were going to land a Lady and I understand that he
12 was on a boat and they were going in to the shore.
13 The boat was hit and he was overturned and he was in
14 the water and there was a lot of service men, from
15 what I understand, were floating in the water and he
16 was one of them. They thought--they thought he was
17 dead until they were looking through the bodies and
18 found that he was alive so they drug him to shore.

19 Q So as a result from that terrible experience, later
20 in life he suffered from--

21 A He had horrible nightmares. He used to--sometime he
22 looked like he would go berserk. My mother would
23 have to call him and take him back to the Veterans
24 hospital and they would keep him there and look
25 after him and then after a while he would come back

1 home and be all right for a while and then the same
2 thing would happen again. A lot of times my brothers
3 and I would have to go over there and take him down
4 ourselves to calm him down and then have him taken
5 back to Veterans Hospital. Finally after--well, he
6 got okay.

7 Q He lived in the Detroit area for a while too, did he
8 not?

9 A Yes.

10 Q He moved to Battle Creek later in life?

11 A Right. He lived with my mother too, also, off of Six
12 Mile Road in Highland Park, I understand they lived
13 there and then he moved to Battle Creek. He got
14 married and moved to Battle Creek. He was much
15 better by that time.

16 Q As far as having--obviously with all these brother's
17 and sisters you probably had a lot of nieces and
18 nephews?

19 A Oh, yes.

20 Q But as far as Johnny--

21 A And grandchildren.

22 Q As far As John David Ruelas, were you close to him
23 as a young boy?

1 A No, sir. I didn't know him as a young boy and I
2 didn't want know him as he got older. To me, he was
3 nothing but trouble.

4 Q Let's talk about him as a young boy, I want to make
5 certain that you didn't know him, he didn't--

6 A I didn't know him as a young boy.

7 Q He didn't come over to your house and spend weekends
8 with Uncle Fred, or anything?

9 A Oh no, no, no.

10 Q No? Was it that kind of--

11 A Are you talking about Johnny or his dad?

12 Q I'm talking about Johnny.

13 A No. He didn't come to my--no. Margaret, as a matter
14 of fact, she kept him away from us. It was fine with
15 me. I could see that he was getting to be just like
16 his dad so I didn't want nothing to do with him to
17 tell you the truth.

18 Q Now, Gilbert was your youngest brother?

19 A Yes.

20 Q Where did he live in the late '60's?

21 A He lived downtown in Detroit and--Cass Avenue in
22 that area. He had friends and would stay with them.
23 Once in a while he would go to my sister, who lived
24 in Troy, Delores Marie, and stay with her and her
25 husband,

1 Q Gilbert was a pretty flashy guy?

2 A Yes.

3 Q He had a lot of--was he involved in a lot of street

4 kind of stuff?

5 A Yes and he was--a lot of -he drank a lot. I tried to

6 get--useless, I couldn't get nowhere with him.

7 Q You were aware that he carried a gun, where you not?

8 A No.

9 Q You didn't know that he carried guns?

10 A I didn't know that, no.

11 Q Had he been in any--well, let me strike that. What

12 was the relationship between Margaret and Gilbert?

13 A Good. They had a good relationship.

14 Q So Gilbert was--

15 A They had a good relationship.

16 Q So something as far as not being associated with

17 Margaret, you, in fat, would say that Gilbert was in

18 touch with Margaret? Would see her?

19 A Oh yes. If he was here, he would tell you a lot

20 'cause I--he was closer and I wasn't.

21 Q Okay.

22 A I--I--I wasn't--the reason that Margaret and I wasn't

23 close is because she was always mean with my mother.

24 Even when I was younger, she was also--I'd come home

25 from a paper route one day and she was hitting my

1 mother and I came in the house and I stopped her and
2 I put her out and I said when you can learn to
3 behave yourself you can come back in. That is when
4 my mother said, okay Freddy from now on you are the
5 man of the house, you run the house. She didn't get
6 back in and finally she got back in and she changed
7 a little.

8 Q You're talking about Margaret now, right?

9 A Yes.

10 Q Where you aware of whether John David--little John
11 David and Gilbert were close?

12 A I'm not sure. I'm not sure. She was close with
13 Margaret so would assume that they were whenever he
14 goes around there. He didn't stay one place very
15 long, I tell 'ya.

16 Q Didn't he?

17 A No. He was gone from here to there to there to here-
18 -everywhere, he was gone,

19 Q He lived--in the area that you were trying to
20 describe that he lived, that was close to Margaret,
21 then?

22 A Right, right, in the same area, right, but not the
23 same place, different places. I supposed once in a
24 while he probably went over there. He probably
25 stayed over there too.

1 Q As far as the father of John David, did you have
2 much contact with him?

3 A The father?

4 Q David Ruelas?

5 A No. I only had one contact with him that I can--
6 that's vivid in my mind, is that is when I got off
7 of work, my brother had called me, my older brother
8 and I went to this place that he was at. It was a
9 bar. I went there to see what he wanted and he told
10 me that--incidentally my brother had lost part of
11 his leg. He has been off to World War II in all
12 kinds of combat and he never got hurt, he comes home
13 and gets shot in the bar trying to help some women
14 with her boyfriend. Her boyfriend gets a gun, he
15 tries to take it away from him and the bullet
16 deflected and went into his leg and he lost part of
17 his leg. Anyways, he was in this bar and I went over
18 there and I said what was the matter and he said--
19 the father, he said, he keeps harassing me. My
20 brother was sitting at the bar and I went over there
21 and I said, why do you keep doing that, you know, he
22 can't do anything to defend himself. If he had his
23 leg, he would and you wouldn't be doing that. Why
24 are you doing that and he says, you want some to and
25 he says, get out of here. He told me. He was sitting

with two other guys. I looked at him and I said,
what are you going to do about it if I don't leave.
He said I will show you and he stuck his hand in his
pocket and I knew what he would do, he was going to
pull a knife. Well, I was much younger then and I
was taught a lot in the service and I disarmed him
real quick and I threw him out.

Q Okay--

A Anyway--

Q When was that--do you remember roughly a time line?

A I was still working at Cadillac. That was years ago.

Anyway, he never tried that again.

Q The police came and they interview you, I believe, two time?

A Yes, in my home?

Q Correct.

A Yes, sir.

Q Did they ask you about anyone in the family owning station wagons?

A Yes. I told them I wasn't sure. He thought Bob owned a station wagon. My son, now, Mark tells me that one time he did but--

MR. HILLER: I would object. I'm sorry, your Honor, but I am going to object to hearsay.

MR. GABRY: Certainly, your Honor, I understand.

THE COURT: Proceed.

BY MR. GABRY

Q Not getting in to what somebody told you, but as a result of hearing that, did that refresh your memory at all? Did you remember then?

A No, it didn't. I didn't recall him having a station wagon.

Q Okay, fine. Police asked you if you knew anyone by the name of Gary Leiterman, correct?

A Yeah, I--

Q Have you ever heard that name?

A No.

Q Had that ever been a name--Gary, Gus, Whimpy--anything like that that came up?

A I didn't know it--let me tell you something, sir.

Number one, my brothers lived an all together

different life than I did, ya know. I just didn't approve of the things that they did and they kind of shied away from me and I shied away from them too even though they were my brothers. So what they did--I don't know too much about their activities.

1 Q You don't know anything about this man sitting next
2 to me from your own personal--the gentleman here in
3 the sport coat and tie, do you know that man?

4 A No, sir.

5 Q Thank you, Mr. Pacheco.

6 THE COURT: Anything further, prosecutor?

7 RE-DIRECT EXAMINATION

8 BY MR. HILLER

9 Q Mr. Pacheco, you told Mr., Gabry that Margaret and
10 Gilber were close?

11 A I would say so, yes.

12 Q And you made the statement that if he were here he
13 could tell you a lot. Meaning Gilbert, I assume?

14 A Yeah, well--about their relationship and about her
15 activities because I didn't--I didn't--I didn't go
16 over there much or hang around her much because--I
17 knew very little about her.

18 Q Do you have any recollection about the late 1960's
19 of any of your brothers or Margaret or David Ruelas
20 having a station wagon?

21 A No, sir.

22 Q Nothing further, thank you, sir.

23 A You're welcome, sir.

24 THE COURT: You may step down, sir, thank
25 you.

1 THE WITNESS: Thank you, sir.

2 (witness excused at 9:52 a.m.)

3 MR. HILLER: Your Honor, People call Ramona
4 Delira. Thank you, sir.

5 THE COURT: Ma'am if you would stop there,
6 raise your right hand and face the clerk. Right
7 here, this lady. Right over here, there ya go.

8 THE COURT CLERK: Right here. Do you swear
9 or affirm that the testimony you are about to give
10 will be the truth, the whole truth and nothing but
11 the truth?

12 MS. DILERA: Yes.

13 (witness sworn at 9:53 a.m.)

14 THE COURT CLERK: Have a seat right up
15 there.

16 THE COURT: State and spell both your first
17 and last names.

18 THE WITNESS: I'm Ramona Delira. R-a-m-o-n-
19 a- D-e-l-i-r-a.

20 THE COURT: Okay. Prosecutor.

21 MR. HILLER: Thank you, your Honor.

22 RAMONA DELIRA

23 DIRECT EXAMINATION

24 BY MR. HILLER:

25 Q Good morning, ma'am.

1 A Good morning.

2 Q Ma'am, who is Margaret Ruelas to you?

3 A She is my mother.

4 Q What is your fathers names?

5 A Donald Dufratis. Excuse me.

6 Q Who is John Ruelas?

7 A He is my half brother.

8 Q With who did you live with when you were young?

9 A My mother, Margaret Ruelas.

10 Q Did there come a time when you went to live with
11 Donald Dufratis?

12 A Yes. I believe I was the age of 10.

13 Q Whe were you born?

14 A 1959.

15 Q What month?

16 A I'm sorry, September. 9-1-59.

17 Q So you would have gone to live with Donald Dufratis
18 in the fall of '69 or sometime in the '70's?

19 A Yes. He started getting visitation rights on the
20 weekends, but I am not sure exactly when I was
21 permanent there. I believe it was--I was almost
22 eleven when it became that I stayed with him
23 permanently.

24 Q When was your half brother, John, born?

1 A I'm sorry, I have no recollection. I have no
2 recollection of a time that he wasn't with us. I
3 don't remember.

4 Q Is he older than you or younger than you?

5 A He was younger than I was.

6 Q About how many years younger?

7 A I don't know--maybe I was ten or eleven and he was
8 four or five.

9 Q When you left to go with your dad?

10 A Yes.

11 Q In the late 1960's--say the year just before your
12 dad--you went to live with him, where did you, your
13 mother and John live?

14 A When he got custody of me?

15 Q Yes.

16 A I believe it was on Second and Third in Detroit.

17 Q Did you tend to move a lot when you were--

18 A Yes.

19 Q --young?

20 A Yes. I remember moving a lot, yes.

21 Q What was life like back then?

22 A Excuse me, I'm sorry. It wasn't good. I'm sorry.
23 From when I was a child until I was ten--I thank God
24 my father took me. I'm sorry. I'm sorry. It was
25 horrible living with her--my mother. I'm sorry I have

1 to say that but it was. I don't know if you want me
2 to elaborate or not?

3 Q Well, I'm sorry to have to do that, but I do.

4 A Moving, just constantly moving. Getting hit quit a
5 lot.

6 Q I'm sorry hit or hid?

7 A Hit.

8 Q Do you remember a David Ruelas?

9 A Yes, he was my step-father.

10 Q Was there a time where you believed he was your
11 biological father?

12 A Maybe--yes, until my real biological father showed
13 up and then I was told he was my step-father.

14 Q During the time that you were with Margaret, other
15 than John were there any other children in the home?

16 A At one point in time there was my half brothers
17 Michael and Bernie Ruelas.

18 Q They left?

19 A The last time--I don't know where they went. The
20 last time I saw them I can't remember how old I was,
21 how old they were. They had gotten in trouble for
22 something where we were living. I can't remember for
23 what. That was the last time I remember seeing them.

24 Q Was that--where was that in--I know you can't remember
25 exact, but the best you can recall, where was that

1 in relationship to when your dad, Don Dafratis, came
2 and you went to live with him?

3 A I remember riding a tricycle. I don't know how old I
4 was and like I said I don't remember how old they
5 were. They got in trouble for something and they
6 left, they were gone. I don't know if they ran away
7 if they were taken away, I don't know. I don't think
8 I saw them after that.

9 Q You don't recall seeing them after that?

10 A Uh-huh.

11 Q Do you recall if John had been born at that time?

12 A No, no. I don't remember. I don't remember seeing
13 him.

14 Q So in the late 1960's, in the time just before Don
15 Dafratis came and you went with him, it was just you
16 and John and your mom, Margaret?

17 A Yes.

18 Q What about David Ruelas, how much would he be
19 around?

20 A Well, not often. He came and left. He never stayed
21 around very long. I don't know if he stayed a week
22 at a time but he came and went. He was not there
23 very often.

24 Q Did your mother bring men home at night?

25 A Yes.

1 Q Did she have a way that she would keep you and your
2 brother quiet at night?

3 A I remember her giving us Vicks 44. I always say the
4 bottle of that. The men, I never saw their faces it
5 was mostly at night and we just--we never saw them.

6 Q Do you remember if your brother John got nose
7 bleeds when he was a kid?

8 A Yes. I don't remember how often, but there was one
9 particular one where he got a bad one. My mother was
10 taking him--she said she was taking him to the
11 hospital. She was taking a cab, and put him in the
12 cab. Another time at a park he got one, but--

13 Q In the late '60's you indicated--you indicate that
14 you moved a lot as a child?

15 A Yes.

16 Q Do you know whether or not those moves were mainly
17 in Detroit or whether or not you were moving to
18 other communities.

19 A I'm sorry, I don't remember where they were. I
20 don't. I remember walking--I remember the Vernors. I
21 remember walking at getting ice cream at the
22 Vernors, but I don't remember where we were living
23 at that time. I don't--I know we used to move around
24 a lot but I don't know where.

1 Q Ms. Delira, thank you very much. I don't have any
2 further questions, Mr. Gabry may.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. GABRY

6 Q Good morning ma'am.

7 A Good morning.

8 Q What was your relationship like with John when--
9 before you began to visit with Mr. Defratis, your
10 real dad?

11 A I had to watch over him to make sure he didn't get
12 hurt. If he got hurt, I would be in trouble for it.

13 I had to watch out for him as far as I can remember.

14 Q Going back in time to prior to when you were ten,
15 when he would--do you remember when he was a new
16 born as far as diapers or anything like that?

17 A No, sir.

18 Q Okay, What is your first memory of little John-John
19 David?

20 A I don't--just when he was older walking around. I
21 don't remember him being a baby. I have no
22 recollection of that. I don't know when he was born,
23 I don't even remember seeing my mom pregnant with
24 him, that's--I don't remember any of that.

25 Q What was you relationship like with David Ruelas?

1 A Good. I was always glad to see him. I--you never
2 knew when he was going to come through the door, but
3 when he did, I was relieved because that meant I
4 wouldn't--

5 Q With your mom--your relationship with your mom-with
6 your mother was pretty terrible.

7 A Yes.

8 Q Was John's relationship with her the same?

9 A No.

10 Q What was different?

11 A She protected him. She made sure that nobody did
12 anything to him. She always protected him.

13 Q I think you described that she would keep him on a
14 short leash?

15 A Maybe, if I said that, yes.

16 Q Keep him close to her?

17 A Yes.

18 Q She didn't let him go off with people?

19 A No, he did go. She did let him go--when my dad--no
20 this--my father told me that when I started going
21 with him on the weekends, she started making demands
22 that if he wanted me than he would have to start
23 taking Jonathon too. Then after a while that
24 stopped. My father said no, that he was just going
25 to go out and fight for full custody of me.

- 1 Q These visits with your father would have been on the
2 weekends?
- 3 A Yes.
- 4 Q Saturday, Sunday?
- 5 A Yes.
- 6 Q During the middle part of the week, you would be
7 living with Margaret--
- 8 A Yes.
- 9 Q --and John--
- 10 A Yes.
- 11 Q --and when your father began entering the picture,
12 you recall living in Detroit, around Second and
13 Third Street?
- 14 A Yes.
- 15 Q Did you go to school back then, when you were nine
16 or ten? Where you enrolled in school?
- 17 A Sorry. No. I mean I remember going to school a
18 couple of times, didn't stay but maybe a couple of
19 days. I don't remember school. I don't remember--not
20 'till I was with my father did I go to school, and I
21 believe it was the fifth grade.
- 22 Q So basically, as far as where you would be, since
23 you were not going to school, you would be with
24 Margaret and John?
- 25 A Yes.

1 Q If Margaret went off who would take care of John?

2 A Me.

3 Q Would Margaret go off with John and leave you?

4 A If she did, I might have been sleeping, but I don't
5 recall her doing that. It was mostly me with him.

6 Q Based on your recollection, you all would pretty
7 much go off in a unit?

8 A Yes.

9 Q Now, is there some indication that she would
10 actually send you two off at certain time to do
11 things together?

12 A Yes.

13 Q What?

14 A We would have to go ask for food.

15 THE COURT: I am sorry, what?

16 THE WITNESS: We'd have to go ask for food
17 at the Salvation Army, or we would have to go to the
18 store and buy bread, or steal it, sorry.

19 BY MR. GABRY:

20 Q But she would, she would send you out to try to
21 steal money or steal some food?

22 A Food.

23 Q What about her brother's? Do you remember anything
24 about Margaret's brothers?

1 A Lee Pacheco. I remember she would get us up in the
2 middle of the night to go clean his, I don't know,
3 his house or where ever he was living.

4 Q Did you know Gilbert Pacheco?

5 A I don't--I knew who he was--of him, but I don't
6 recall him that much, no.

7 Q What about Robert?

8 A Yes, he would come and visit us once in a while.

9 Q Did any off--how did--how did everyone--how did you
10 treat John?

11 A Well he was--I protected him. He was my brother, I
12 wanted to protect him. There was a few times that I
13 would get mean with him, but--ya know--beg him not
14 to tell, ya know. For the most part I did, but--

15 Q Do you recall anything unusual about him? Any period
16 of time, as you were stating to see your father, was
17 he relating anything to you about nightmares or
18 fears or anything unusual that had occurred in his
19 life that he relayed to you?

20 A No, but our life--if he did he wouldn't say it any
21 way. We--we just--I did anyway lived in fear so it
22 was just normal, I guess. It wasn't anything that he
23 was going to tell me that was different.

24 Q The detectives talk with you, I think, over the
25 phone initially?

1 A Yes, somebody called at my fathers house.

2 Q They asked you if you had any recollection of ever

3 living in the Ann Arbor or Ypsilanti area?

4 A I don't know. If we did, I honestly don't remember.

5 Q So you have no recollection of that?

6 A No, sir.

7 Q You don't recall any incident of John David ever

8 being let go of any people or any strangers or

9 anything like that, is that correct?

10 A Correct.

11 Q Either Margaret had him or you had him?

12 A Auh-huh.

13 Q Did you ever hear of a lady named Jane or Janie?

14 A No.

15 Q So as far as Jane Mixer, that name is foreign to

16 you?

17 A Yes, I don't remember.

18 Q Gary Leiterman, is that name foreign to you?

19 A No, I don't know who that is.

20 Q When was the last time you recall seeing David

21 Ruelas in relationship to when you started seeing

22 your real dad?

23 A When I was with my real father, when was the last

24 time--he came to visit. He asked permission to come

1 visit me where we were living in Taylor, Michigan.

2 He came one time--I believe it was one time.

3 Q So, this would have been after--

4 A That was the last time.

5 Q This would have been after you moved away from
6 Margaret?

7 A Yes.

8 Q And John?

9 A Yes.

10 Q And you were living in Taylor with your real dad?

11 A Yes.

12 Q And David Ruelas was still alive?

13 A Yes.

14 Q So, this was sometime in the '70's?

15 A I believe--yeah--I believe so, yes.

16 Q In some of the information that I received as far as
17 what you had discussed with the detectives, there is
18 a statement made and I just ask you if you made it,
19 could you explain it for me; indicating to them a
20 feeling that you moved around a lot like you were on
21 the run from something. Did you feel that way as a
22 young child, like you were running from something?

23 A I just didn't understand why we had to move. We were
24 constantly moving, so I just--as I got older I
25 always wondered why.

1 MR. GABRY: Thank you, your Honor.

2 THE COURT: Any thing further, prosecutor?

3 MR. HILLER: Nothing further, your Honor,

4 thank you.

5 THE COURT: You may step down, ma'am. Thank

6 you, you are excused.

7 (witness excused at 10:16 a.m.)

8 THE COURT: We will take our morning break

9 at this time, ladies and gentleman. We will be in

10 recess for a short period of time. Please go with

11 Ms. Washington.

12 THE LEGAL CLERK: All rise, please

13 (Court in recess at 10:17 a.m.)

14 (Court resumes at 10:52 a.m.)

15 THE LEGAL CLERK: Washtenaw County Trial

16 Court is now back in session.

17 THE COURT: Thank you, please bring in the

18 jury.

19 THE LEGAL CLERK: All rise for the jury,

20 please.

21 THE COURT: Please be seated. Call your

22 next witness.

23 MR. HILLER: Tameka Singleton, your Honor.

24 THE COURT: First stop--ma'am, first stop

25 there, raise your right hand and face the clerk

THE COURT CLERK: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth?

MS. SINGLETON: I do.

(witness sworn at 10:54 a.m.)

THE COURT CLERK: Have a seat up there.

THE COURT: State and spell your first and last names.

THE WITNESS: It's Tameka, T-a-m-e-k-a
Singleton, S-i-n-q-l-e-t-o-n.

THE COURT: Prosecutor.

MR. HILLER: Thank you, your Honor.

TAMEKA SINGLETTON

DIRECT EXAMINATION

BY MR. HILLER

Q Ma'am can you please tell us where you work?

A Sure. I am employed by the Washtenaw County Sheriff's office.

Q In what capacity?

A I am a detective.

Q How long have you been a Deputy Sheriff for Washtenaw County?

A This makes seven years for me.

Q How long have you been a detective?

A Three.

1 Q Are you currently assigned to Law Net?

2 A Yes, I am.

3 Q What is Law Net?

4 A Law Net is the Livingston and Washtenaw, Jackson

5 area, narcotics team.

6 Q Is one of your--does your unit assist other agencies

7 when there are special assignments that need to be

8 carried out?

9 A Yes, we do.

10 Q On November 23, 2004 did you travel to the home of

11 Gary Leiterman in Gobles, Michigan for the purpose

12 of executing a search warrant?

13 A Yes, I did.

14 Q Where there other members of the Law Net team

15 present?

16 A Yes, there were.

17 Q Did you have a particular assignment in searching

18 the house?

19 A Yes. Yes, I did. I was assigned to a certain

20 location with in the house.

21 Q Were you working a lone or did you have a partner?

22 A I had a partner.

23 Q Who was that?

24 A Detective Thomas Sinks.

25 Q Can you spell his last name for us?

1 A S-i-n-k-s.

2 Q What particular area of the home were you assigned
3 to search?

4 A I was assigned to search the basement area. It was a
5 storage closet within the basement.

6 Q Among the items that were assigned to search for,
7 did that include firearms, firearm parts and
8 ammunition? I would like to show you People's
9 purposed exhibits 40 and 81, Can you inspect those
10 please and tell me if you have ever seen them
11 before?

12 A Yes, I have.

13 Q Where have you seen these before?

14 A They are the items that I located in the basement
15 storage area,

16 Q Of the defendant's house?

17 A That's correct.

18 Q Can you tell the jury please what item number forty
19 is?

20 A Item number forty is the cylinder for a revolver
21 that fits a 22-calliber gun.

22 Q And number 81, I believe.

23 A 81 is a sample of a 22-calliber bullets that were
24 taken from a box within the basement as well. They

1 were both, actually, in the same--located in the
2 same box.

3 Q When you say a sample, were there other bullets that
4 you did not seize, or take out?

5 A There were other miscellaneous bullets that were in
6 the box as well.

7 MR. HILLER: Your Honor I would move for
8 the admission of People's purposed exhibits 40 and
9 81.

10 THE COURT: Any objection?

11 MR. GABRY: No, your Honor.

12 THE COURT: 40 and 81 are admitted.

13 MR. HILLER: Thank you, detective, I don't
14 have any further questions.

15 THE COURT: Cross examination.

16 MR. GABRY: Thank you, your Honor.

17 CROSS EXAMINATION

18 BY MR. GABRY

19 Q Detective, exhibit 40 is now in a plastic bag. Did
20 you place it in that kind of container?

21 A No, I did not.

22 Q When you found it, was it laying loose like that or
23 was it in some other kind of packaging?

24 A Nope, it was laying loose within the box.

1 Q Do you recall seeing some sort of corduroy or felt
2 sack or pouch?

3 A Yes, there was a red, I believe it was a cleaning
4 cloth, that was next to the cylinder.

5 Q So, the cylinder was sitting next to this cleaning
6 cloth?

7 A That's correct, sir.

8 Q Now, was this all in one box?

9 A Yes, it was.

10 Q Can you describe the box for the jury?

11 A The box was maybe about two or three feet. It was a
12 pretty shallow box. It just had the cylinder and
13 miscellaneous--other ammunition. Some other shot gun
14 shells.

15 Q A shoe box? Bigger than a shoe box?

16 A Slightly bigger than a shoe box.

17 Q Was it full?

18 A I would not say that it was full. It was probably
19 about two inches filled.

20 Q It basically consisted of ammunition and a gun part?

21 A That's correct.

22 Q You went through all those ammunition and just
23 selected the ones you believed belonged to the 22-
24 caliber?

25 A That's correct.

1 Q Would these have been in these boxes?

2 A Yes, they were.

3 Q So they were packaged in here. One of them say

4 Winchester--two of them say Winchester Short. The
5 other one says lefty?

6 A Blank cartage black powder.

7 THE COURT: Can you speak a little louder,
8 please.

9 THE WITNESS: Black--excuse me, blank
10 cartage black powder.

11 BY MR. GABRY

12 Q Do you know if any of those bullets are blank
13 cartage black powder?

14 A No, I don't know.

15 Q Did you also find a receipt for a 22-rifel in the
16 box?

17 A Yes, I did.

18 Q Marlin 22?

19 A That's correct.

20 Q Where was this box located in this storage room?

21 A It was located within the shelves in the basement.

22 The shelves line the wall. There were several other
23 boxes containing Christmas items and storage. It
24 seemed to me long-term storage items.

25 Q Does this box appear to be recently moved?

1 A No, it didn't.

2 MR. GABRY: No further questions, your
3 Honor.

4 THE COURT: Anything further?

5 RE-DIRECT EXAMINATION

6 BY MR. HILLER

7 Q Detective Singleton, you've stated that you found a
8 receipt for a 22-rifel, did you find any firearms
9 during your search?

10 A No.

11 MR. HILLER: Nothing further.

12 THE COURT: Anything further Mr. Gabry?

13 MR. GABRY: Nothing, your Honor.

14 THE COURT: You may step down, your
15 excused.

16 THE WITNESS: Thank you.

17 (witness excused at 11:02 a.m.)

18 THE COURT: Counsel would you approach the
19 bench, please.

20 (bench conference at 11:03 a.m.)

21 (Court resumes at 11:04 a.m.)

22 MR. HILLER: Your Honor, People call Robert
23 Kaplan.

24 THE COURT: Mr. Kaplan, stop and face the
25 clerk and raise your right hand.

1 THE COURT CLERK: Do you solemnly swear or
2 affirm to tell the truth, the whole truth and
3 nothing but the truth?

4 MR. KAPLAN: Yes.

5 (witness sworn at 11:04 a.m.)

6 THE COURT CLERK: Have a seat right over
7 there.

8 THE COURT: First, state and spell both
9 your first and last names.

10 THE WITNESS: Robert Kaplan, R-o-b-e-r-t K-
11 a-p-l-a-n.

12 THE COURT: Prosecutor.

13 ROBERT KAPLAN

14 DIRECT EXAMINATION

15 BY MR. HILLER:

16 Q Mr. Kaplan I see by your shirt that you work at True
17 Value Hardware?

18 A That's correct.

19 Q Where is your store located?

20 A In the city of Wayne on Wayne Road.

21 Q How long have you worked there?

22 A Well, I am the owner. It is a family business. I
23 have been there all my life, so forty years, plus.

24 Q How long has the store been there?

1 A The store has been there about sixty-five years.
2 We've owned it as a family for fifty-five years.
3 Q Does your store sell firearms and ammunition?
4 A Yes.
5 Q Did it sell firearms and ammunition in the late
6 1960's?
7 A Yes.
8 Q In the late 1960's did you work at the store?
9 A Yes, I did.
10 Q In the late 1960's do you know if it was required of
11 people buying ammunition to provide certain
12 information that was recorded?
13 A There was a period of time, I am not sure the
14 specific dates, our journals would reflect that,
15 that ammunition used in hand guns had to be
16 recorder--small ammunition.
17 Q Would that include 22-caliber ammunition?
18 A Yes, it would.
19 Q How was the information recorded?
20 A Very similar to purchasing of a rifle. You would--
21 the individual would have to produce identification,
22 giving his name, address, telephone number, driver's
23 license number and then we recorded it
24 appropriately.

1 Q Did you record the type of ammunition that was
2 purchased?
3 A Yes, we did.
4 Q Did the person also have to sign for it and provide
5 address and so forth?
6 A Yes.
7 Q Where those records maintained by your store?
8 A Yes, we did.
9 Q Was that something that was done through the normal
10 course of business?
11 A Yes.
12 Q Are those records from the late 1960's still in
13 existence?
14 A Yes, they are.
15 Q Did you have them at your store?
16 A I did.
17 Q Did there come a time where a State police detective
18 came and talked to you and inspect your records?
19 A Yes.
20 Q Do you see that detective in Court?
21 A Yes, I do.
22 Q Can you point to him, please?
23 A The gentleman sitting right behind--right there.
24 Q There are two detectives sitting here, sir.
25 A The one in the back row.

1 Q The one in the back row.

2 MR. HILLER: Your Honor, may the record
3 reflect the identification of Detective Bunchou?

4 THE COURT: He did.

5 BY MR. HILLER:

6 Q Did you have occasion, while Detective Bunchou was
7 there to inspect your records regarding firearms and
8 ammunition purchases for periods of time in 1967 and
9 also in 1969?

10 A Yes, I did.

11 Q During your inspection of records did you find any
12 entries where there was ammunition purchased by a
13 man who identified himself as Gary Leiterman?

14 A Yes, I did.

15 Q For those entries was the purchaser's signature in
16 the book?

17 A I do not recall, I would have to see the book.

18 Q After inspecting the records with Detective Bunchou,
19 did you—what did you do with those records?

20 A The detective took them per our instructions—his
21 instructions and kept them for us.

22 Q Did you see them here today?

23 A Yes, I did.

24 Q Are they what I am holding?

25 A They are.

1 Q I am going to show you People's purposed exhibits 40
2 and 51 and if you could take a look at those and
3 tell me if those are the records you gave to
4 Detective Bunchou?

5 A Yes, they are.

6 Q You can go ahead and--actually let me have one of
7 the detectives open these.

8 MR. HILLER: Your Honor, while Detective
9 Bunchou is doing that, I would move for the
10 admission of exhibits 47 and 51.

11 THE COURT: Any objection?

12 MR. GABRY: No, your Honor.

13 THE COURT: Why don't you identify what
14 they are.

15 BY MR. HILLER:

16 Q Could you describe what they are for us, Mr. Kaplan?
17 A The books are journals--handwritten journals that we
18 keep on firearm and ammunition transactions.

19 THE COURT: Which is which?

20 THE WITNESS: I would have to see them to
21 identify them, sir.

22 THE COURT: All right, let's get those to
23 him.

24 BY MR. HILLER:

25 Q Here is exhibit 47 first.

1 A 47 is records of ammunition.

2 Q Does that cover the period of time in 1969?

3 A It does.

4 Q On--you're looking on page 18 and 19 of that book?

5 A I am.

6 Q Do you see a entry of sale of ammunition to Gary
7 Leiterman?

8 A I do, two boxes of 22 long rifle.

9 Q Where on the pages are they located?

10 A Second entry from the bottom and it is signed.

11 Q And People's exhibit 51, what is 51?

12 A 51 is a log of firearms. The gentleman's name,
13 Leiterman, is also in here. In 1967 and there are
14 (INAUDIABLE).

15 Q Are there signatures?

16 A Also signatures, that is correct.

17 THE COURT: 47 and 51 are admitted.

18 BY MR. HILLER:

19 Q 51 is the sale of firearms and 47 is the sale of
20 ammunition?

21 A That is correct.

22 MR. HILLER: Mr. Kaplan, I have nothing
23 further, Mr. Gabry might.

24 THE COURT: Cross examination? Did he talk
25 about 51 and an entry in there, or no?

1 MR. HILLER: He did talk about 51, your
2 Honor, and he said that was to record the sale of
3 firearms and he said there was at least one entry
4 with Gary Leiterman's name and signature.

5 THE COURT: What does it indicate the
6 firearm is?

7 THE WITNESS: I would have to see the book
8 again, sir. Let's see. The first entry that I see is
9 a Steven 16-gauge shot gun that was purchased.

10 BY MR. HILLER:

11 Q And what page is that on?

12 A That is on page 41. On page 59, there was a 12-gauge
13 shot gun purchased also by the same individual.
14 There's other notation of other names on here Judge,
15 I am not sure what the relevancy of that is.

16 THE COURT: Are there any other firearms
17 listed for this individual?

18 THE WITNESS: Not in this book that I can
19 see, sir.

20 THE COURT: All right, thank you. Mr.
21 Gabry.

22 CROSS EXAMINATION

23 BY MR. GABRY:

24 Q Mr. Kaplan did you know Gary Leiterman?
25 A I did not.

1 Q So as far as--you not able to identify the person
2 who signed that book?

3 A I am not.

4 Q Did you know a person by the name of George or Ed
5 Messingham?

6 A I do.

7 Q How do you know George Messingham?

8 A He has been a customer for many years.

9 Q When you say he's been a customer, has he also been
10 a customer for firearms and ammunition?

11 A I believe so.

12 Q His mother worked at your store at one point in
13 time, is that correct?

14 A She did, yes.

15 Q Other than the notations that you've identified in
16 here as to Mr. Leiterman, you don't have any
17 recollection of him being a frequent customer for
18 purposes of hunting supplies or ammunition or
19 firearms?

20 A I have no knowledge of that, sir.

21 Q Does your store do a--how would you describe the
22 business that you do as it pertains to firearms and
23 ammunition?

24 A Can you clarify the question, please?

1 Q Are you busy in that area? Do you have good volume
2 in that area? Is it--

3 A It's varied over the years but it is a decent part
4 of the business.

5 Q Do you sell handguns as part of the business as
6 well?

7 A Presently we do not. We are licensed to, but back in
8 the past years we have.

9 Q So back in 1969, you would have sold handguns? Was
10 there anything unusual about the purchase of two
11 boxes of 22-caliber ammunition?

12 A No.

13 Q Anything unusual about the purchase of a couple of
14 shot guns over the years?

15 A No.

16 Q Are you familiar with types of ammunition?

17 A I am.

18 Q What types of--does your journals indicate what types
19 of ammunition was purchased back in 1969?

20 A Yes, they do.

21 Q What types?

22 A All types. I'm not sure of the question.

23 Q As it pertains to Mr. Leiterman, what type of
24 ammunition was purchased?

- 1 A The journal reflected that there was 22-calliber
2 ammunition purchased by Mr. Leiterman.
- 3 Q Pardon me.
- 4 A 22-calliber ammunition was purchased by Mr.
5 Leiterman according to those journals.
- 6 Q What is 22-calliber long rifle super X ammunition?
- 7 A Super X is a brined that is popular back in that
8 time. It is still made. It's just 22-calliber long
9 rifle which is different destination than 22-
10 calliber short, long rifles. There are three
11 different types.
- 12 Q Was there some indication in these documents that
13 Mr. Leiterman bought super X ammunition on February
14 22, 1969?
- 15 A I believe that was the notation. I would have to
16 look again, but I believe that is what it said.
- 17 Q I believe that would be in exhibit 47 is that
18 correct?
- 19 A 22-calliber long rifle super X, that is correct.
- 20 Q (INAUDIABLE), sir?
- 21 A I am not.
- 22 Q Do you have any target shoot, or hunt yourself?
- 23 A I do.
- 24 Q Are you familiar with Remington Gold type of
25 ammunition?

1 A I think--I believe that we do sell it but I would
2 have to--I couldn't recognize it from one to
3 another.

4 Q Do you know whether or not Winchester Super X is the
5 same as Remington Gold?

6 A I have no knowledge.

7 Q It is my understanding that you also provided some,
8 I guess, sample box to the detectives?

9 A Yes, we did.

10 Q I am not sure--I'd asked you to look at the boxes in
11 exhibit 81. Does that look familiar?

12 A It does.

13 Q Is it the same type of ammunition?

14 A It is the same label and the same type of
15 ammunition.

16 Q What about the pricing? This looks like \$3.49,
17 \$1.89, is that a new kind of pricing tag?

18 A Yes, it could have been--we don't use that system
19 know, but it could have been. I mean--I am not sure
20 what it represents. The price seems right, but the
21 code--I'm not sure.

22 Q Did you shop at Meijer Thrifty Acres in the old
23 days? Familiar with their key system as far as
24 sporting goods?

25 A No.

MR. GABRY: I have nothing further, your Honor.

THE COURT: Further questions, prosecutor?

MR. HILLER: Nothing further, your Honor,
thank you.

THE COURT: You may step down, sir, you are excused.

(witness excused at 11:19 a.m.)

MR HILLER: Your Honor, People call Megan Shaffer.

THE COURT: You can stop there if you would, face the clerk and raise your right hand.

THE COURT CLERK: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth?

MS. SHAFFER: I do.

(witness sworn at 11:19 a.m.)

THE COURT CLERK: Have a seat right up there.

THE COURT: State and spell both your first
and last names.

THE WITNESS: My name is Megan Shaffer, M-
e-g-a-n S-h-a-f-f-e-r.

THE COURT: Prosecutor.

MEGAN SHAFFER

1 DIRECT EXAMINATION

2 BY MR. HILLER

3 Q Where do you work, ma'am?

4 A I work for Reliagene Technologies. We are a private
5 DNA testing lab outside of New Orleans, Louisiana.

6 Q What do you do at Reliagene?

7 A I am the assistant director. I am responsible for
8 the day to day processing of samples and report
9 generation in the forensics laboratory.

10 Q Does your laboratory do forensic testing?

11 A Yes, we do.

12 Q Do you also do other types of DNA testing?

13 A We also do paternity testing, as well.

14 Q Can you tell the jury, please, your educational
15 history starting with college.

16 A I have a bachelors degree in biology from Indiana
17 University in Bloomington. I have a Ph.D. in
18 microbiology and immunology from Louisiana State
19 University Health Sciences Center.

20 Q I'm sorry, how long have you worked at Reliagene?

21 A It will be four years in October.

22 Q Do you--do you perform DNA testing at Reliagene?

23 A I have done some DNA testing, but my role is
24 generally as a supervisor, I am responsible for the

1 quality control and the review of the reports and
2 the signing of the reports.

3 Q Prior to working with Reliagene did you have any
4 previous work related experience?

5 A I did a post doctoral fellowship working on genetics
6 at L.S.U. New Orleans.

7 Q Have you testified as an expert in DNA verification
8 in court before?

9 A Yes, I have.

10 Q Approximately how many occasions?

11 A Probably about ten occasions, for both the State and
12 the prosecution--the defense and prosecution.

13 Q Do you recall what Courts you testified in? What
14 States and whether it was State or Federal?

15 A I testified in Wayne County--Detroit, Michigan and
16 in Mississippi, Alabama, Louisiana and Tennessee.

17 MR. HILLER: Your Honor, I would ask that
18 Dr. Shaffer be allowed to testify as an expert in
19 the field of DNA.

20 THE COURT: Any objection?

21 MR. GABRY: No, your Honor.

22 THE COURT: We will receive expert
23 testimony from this witness.

24 BY MR. HILLER:

1 Q Dr. Shaffer did--did your company receive any
2 evidence that was sent down by Dr. Steven Milligan
3 of the Michigan State Police, Lansing laboratory?
4 A We received the DNA extract from Dr. Milligan.
5 Q What is the extract? Physically what did you
6 receive?
7 A The--if I may?
8 Q Sure. You're looking at your report?
9 A Excuse me.
10 Q You're looking at your case jacket?
11 A Yes, I am looking at my case file which I have
12 photocopies of the evidence which I received and the
13 analysts notes that say:
14 "one green 1.5 mil of each tube present"
15 That is labeled 728-691279.02C
16 Q Was that also identified as DNA extract of blood off
17 left hand?
18 A That's correct. That's what's written on the
19 envelope.
20 Q What did you do with that extract--what did your
21 company do with that extract?
22 A We were requested to do an analysis on the DNA in
23 the extract to determine if a profile could be
24 obtained.

1 Q Now, are you familiar with the DNA kits that the
2 State Police use?

3 A My understanding is that the State Police used
4 called Profiler and Co-filer.

5 Q Do you use those kits?

6 A We do use those kits. We did not use those kits in
7 this testing.

8 Q What kit did you use in this testing?

9 A We used a kit called Identifiler.

10 Q How is Identifiler different from Profiler and Co-
11 filer plus?

12 A Identifiler is basically a combination of the two,
13 Profiler and Co-filer kits that is just done on one
14 single reaction.

15 Q Then the loci that the State Police detect using
16 Profiler and Co-filer Plus, which I understand it to
17 be referred to as the COTIS loci?

18 A Right.

19 Q Are those also detected by the kit that your lab
20 used?

21 A Yes, they are.

22 Q It just, instead of running two tests, you do one?

23 A That's correct.

24 Q Did you run the test on the evidence--on the extract
25 of the blood from the left hand that you received?

1 A Yes, we did.

2 Q Were you able to develop a profile from that blood?

3 A Yes, we were.

4 Q From the extract, what were the results from your

5 analysis?

6 A The results of our analysis is that we obtained DNA

7 extract tat produced at least two DNA donors, one of

8 which is male--at least one of which is male.

9 Q Were you given any known samples to compare those

10 to?

11 A No, we were not.

12 Q Have you had an opportunity to compare the profile

13 that your testing revealed with the profile that was

14 developed off the left hand by Dr. Milligan of the

15 State Police laboratory?

16 A Yes, I have reviewed those results.

17 Q What are your conclusions?

18 A My conclusions are that the two results are

19 consistent with each other. We did find a few

20 additional loci in our testing.

21 Q Can you explain how you would find additional loci?

22 A My understanding that the Michigan State Police used

23 a different threshold of measurement than Reliagene

24 Technology uses. We allow for a little more--a lower

25 threshold so we can obtain additional alleals.

- 1 Q Is that because you use a different kit?
- 2 A It's partially because we use a different kit. We
3 have done extensive sensitivity and mixture
4 analysis, and we have found that this is the best
5 threshold that works for us.
- 6 Q Despite that though, the results that you obtained
7 from your testing were consistent with the State
8 Police results?
- 9 A That's correct.
- 10 Q Did your laboratory also receive another piece of
11 evidence that was shipped separately from Detective
12 Sergeant Patrick Moore from the State Police,
13 Ypsilanti Post?
- 14 A Yes, we did.
- 15 Q Was there a problem with that evidence?
- 16 A The evidence was logged in on a Saturday and the
17 laboratory director took possession of the evidence
18 and locked it in his office and forgot that he had
19 possession of it and we could not find the evidence
20 for two months.
- 21 Q Ultimately was it located?
- 22 A Yes, it was.
- 23 Q Where was it located?
- 24 A It was located in his locked office.
- 25 Q When was that?

1 A On Friday afternoon.

2 Q Can you tell the jury, please, what it was that

3 Reliagene received from Sergeant Moore?

4 A We received evidence packaging. It was a coin

5 envelop--an envelope that contained a coin envelope

6 that contained a folded paper packet.

7 Q What was done with that evidence?

8 A When we obtained the evidence we opened it up and it

9 did not appear that there was any blood stain left

10 on the inside so we took moistened cotton swab and

11 we--

12 Q When you opened up--what did you open up?

13 A We opened up the paper packet that came in the

14 envelope--in the evidence envelope. Once we opened

15 that up it did not appear that there was blood on

16 the inside. My understanding was that this at one

17 time contained blood from the crime scene. So, we

18 took a cotton swab--moistened cotton swab, and took

19 a swab of the inside of the paper packet.

20 Q This may seem like an obvious question, but the

21 cotton swab that you used and the water that you

22 used, were those sterile?

23 A Yes.

24 Q Were you able to do analysis on whatever was swabbed

25 up with the cotton swab?

1 A We did do an analysis on it; however, we were unable
2 to obtain a result.

3 Q Were not able to detect any DNA?

4 A That's correct.

5 Q Where is that packet now?

6 A I called this morning to Reliagene and asked to have
7 it shipped over night to Detective Sergeant Moore.

8 Q But it is still at your laboratory?

9 A That is correct.

10 Q You have--do you have a photocopy or a photograph of
11 that evidence?

12 A Yes, I do. This is what was shipped. The outside
13 says Detective Sergeant Moore's. This is a picture
14 of what is actual inside the paper packet. This is
15 what all three came together.

16 Q Can I borrow that?

17 A Certainly.

18 Q The photograph that I have just taken from your
19 folder and that had Detective Moore's marking, is
20 that a fair and accurate representation of what your
21 lab received from Detective Sergeant Moore?

22 A Yes, it is.

23 Q This has now been marked as People's purposed
24 exhibit 83, and I ask you again, is that a fair and
25 accurate representation of what you received?

1 A Yes, it is.

2 MR. HILLER: Your Honor, I would move for
3 the admission of 83.

4 THE COURT: Any objection?

5 MR. GBARY: No, your Honor.

6 THE COURT: Admitted.

7 MR. HILLER: Thank you, your Honor.

8 BY MR. HILLER:

9 Q Ms. Shaffer, when I said borrow, I meant for quit a
10 while, so--

11 A Okay.

12 MR. HILLER: I don't have any further
13 questions, thank you.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION

16 BY MR. GABRY

17 Q So, Dr. Shaffer I understand correctly--did you
18 actually do the testing?

19 A Of which sample?

20 Q Of the extract?

21 A No, I did not.

22 Q Who did that?

23 A Her name is Huma Lasier, she is a analyst too at
24 Reliagene Technology.

1 Q Are you involved at all in the--in the analysis of
2 it?

3 A In this particular sample, I believe I did the
4 second analysis. An independent analysis of the DNA
5 results. I believe I may have also done some of the
6 quantitation, lab work.

7 Q I understand that what you were testing was the
8 extract?

9 A That is correct.

10 Q So all of the preliminary, I guess, analysis of the
11 evidence, the washing of the DNA, all of that was
12 done by the Michigan State Police lab?

13 A That's correct.

14 Q What they sent to you was the remainder of the DNA
15 extract?

16 A That's correct.

17 Q While your results appear different, when I look at
18 them, that's because you use different--I don't know
19 if I really know what a kit is?

20 A The kit that I am referring to is a--what we use is
21 a multi-loci PCR system. There are several different
22 kits available. For example, the profile has a
23 certain number of loci, Co-filer has a different
24 number, Identifiler is a third kit that contains
25 the same markers but all together in one reaction.

1 That's what I'm terming as a kit. Identifiler has a
2 16 marker set.

3 Q So actually you come up--when your company does its
4 analysis using the materials you use, you end up
5 with more than the thirteen loci the State Police
6 use?

7 A That's correct.

8 Q What known or reference samples have you reviewed?

9 A I reviewed the known sample from Jane Mixer as well
10 as the Michigan State Police blood off the left hand
11 sample.

12 Q Have you had an opportunity to review any known
13 reference sample of a Margaret Ruelas?

14 A No.

15 Q So you don't know what alleals consist of Margaret
16 Ruelas' profile?

17 A No, I do not.

18 Q What alleals do you see consistent with your
19 findings and the reference sample as it pertains to
20 Jane Mixer?

21 A There are a few overlapping markers, however, there
22 are several markers which are exclusions. For
23 example D-7 is a clear exclusion.

24 Q D-7 is an exclusion?

25 A Yes.

1 Q Of Jane Mixer?

2 A From the DNA extract to Jane Mixer those are not

3 consistent.

4 Q So that would not be consistent with a mixture of

5 Jane Mixer and John Ruelas?

6 A I have not seen John--the other profile so I--

7 Q So you have not seen either John David Ruelas or

8 Margaret Ruelas' profile?

9 A No, I haven't.

10 Q But based on your markers you would exclude Jane

11 Mixer as being a contributor of this, what has been

12 identified of blood scrapped off left hand?

13 A That's correct.

14 MR. GABRY: Thank you, your Honor.

15 RE-DIRECT EXAMINATION

16 BY MR. HILLER

17 Q And when you say that, Dr. Shaffer, you're referring

18 to, I believe to the D-7 loci?

19 A That's correct.

20 Q When you say that, are you referring to the--well

21 first of all, D-7, do you see evidence of a mixture

22 at that loci?

23 A At that particular locus, no. There are two markers

24 there, however, one has a weak alleal, which means--

25 a weak alleal means that it is less than 50 percent

of the component. Whether or not it is a mixture is an interpretation.

3 Q Is that result consistent with the State Police
4 result?

5 A Yes, it is.

6 Q So when you say she is excluded--that Jane Mixer is
7 excluded as a contributor in that loci, if it's a
8 mixture we are talking about the major donor,
9 correct?

10 A That's correct.

11 Q Are you--if there was a minor donor that you were
12 unable to detect at that loci, are you able to
13 express any opinion about that?

14 A There are several different loci, if would appear,
15 that have below the threshold alleals, however, just
16 looking at the paper plots, I can't tell you if
17 there is a below threshold marker there.

18 Q Okay, my question was if there was something that
19 was below threshold there, are you able to express
20 any opinion about it?

21 A No.

22 MR. HILLER: I don't have any further
23 questions.

24 THE COURT: Any further questions, Mr.
25 Gabry?

1 RE-CROSS EXAMINATION

2 BY MR GABRY

3 Q Reliagene has done their own validation studies, I
4 would assume?

5 A That's correct.

6 Q So, when they look at these more sensitive below--
7 thresholds, it's based on your observations, based
8 on your protocols, based on your validity studies
9 when you formulate an opinion?

10 A That's correct.

11 Q Was is your threshold if we talk in terms of RFU's?

12 A Our threshold is 75 RFU.

13 Q So because of the type of kit that you use when you
14 analyze the extract, you are able to look at below
15 150?

16 A That's correct.

17 Q In looking below there, you believe that Jane Mixer
18 is excluded as being a contributor at certain loci?

19 A Yes.

20 MR. GABRY: Thank you.

21 THE COURT: Further questions? You may step
22 down, ma'am. You are excused.

23 MR. HILLER: I am sorry, Your Honor, I do.

24 THE COURT: Okay. Got to be quick. Go
25 ahead.

1 MR. HILLER: I thought I was.

2 RE-DIRECT EXAMINATION

3 BY MR. HILLER

4 Q I guess I need to clarify and make sure we are
5 getting accurate information to the jury, here. When
6 you are excluding Jane Mixer as a possible donor,
7 are you referring to the major donor in this
8 profile?

9 MR. GABRY: Your Honor, I am going to
10 object as to the leading nature of the question, if
11 he wants to ask her what she means by that--

12 THE COURT: I don't think it is leading,
13 under these circumstances. She can answer.

14 MR. GABRY: Thank you, your Honor.

15 THE WITNESS: According to my review of
16 Jane Mixer's profile, she is excluded from the
17 results that we obtained at certain loci whether
18 they be major or minor, she appears to be excluded.

19 BY MR. HILLER

20 Q What loci is that?

21 A She is excluded at D-7, she also--she has some
22 overlapping allels, however there are some markers
23 present in her profile that are not present in the
24 mixture.

25 Q Anywhere else besides D-7?

1 A D-16 she has an eleven twelve and our results report
2 a ten eleven and I don't see evidence of a twelve in
3 that particular marker--

4 Q Is that--is that result, ten eleven at D-16
5 consistent with the State Police result?

6 A Yes, it is.

7 Q The result at D-7, is that also consistent with the
8 State Police result?

9 A Yes, it is.

10 Q Where else do you find exclusion?

11 A At D-5 her--Jane Mixer's profile is an eleven twelve
12 and we report an eleven single marker.

13 Q D-5 is down towards the bottom?

14 A Right, that is also consistent with the Michigan
15 State Police

16 Q That is also consistent, and D-7 is also, I believe
17 you said, is consistent?

18 A Yes. D-18, Jane Mixer's profile is a twelve fourteen
19 and we report a fourteen fifteen that is also--the
20 fourteen fifteen is also consistent with the
21 Michigan State Police report.

22 Q Anywhere else?

23 A At the marker CSF Jane Mixer's profile is a ten
24 eleven and we report an eleven twelve. The Michigan

1 State police did not report any markers at that
2 locus.

3 Q She's a--I'm sorry, you reported an eleven twelve-

4 A Jane Mixer shows a ten eleven.

5 Q Do you have a copy with--of the Michigan State
6 Police report up there with you?

7 A Yes, I do.

8 Q Would you look to see if that report contains a
9 profile for a John Ruelas, R-u-e-l-a-s?

10 A No, it does not.

11 MR. HILLER: Can I have a moment, your
12 Honor?

13 THE COURT: Yes.

14 BY MR. HILLER

15 Q Ma'am let me show you, if I may, a copy of a State
16 Police DNA report. This would be record 0400111,
17 which contains a profile of a known sample of John
18 David Ruelas.

19 MR. GABRY: Your Honor, I would object.
20 This hasn't been placed into evidence, we've been
21 through all of the other lab analysts and I don't
22 remember us ever eliciting this. If we are going to
23 re-do it--an analysts at this point in time--

24 THE COURT: She hasn't seen it before?

25 MR. HILLER: I don't believe she has.

1 THE COURT: I'm going to sustain the
2 objection.

3 MR. HILLER: Can counsel approach, your
4 Honor?

5 THE COURT: Yes.

6 (bench conference at 11:46 a.m.)

7 (Court resumes at 11:47 a.m.)

8 BY MR. HILLER

9 Q Ma'am, just to clarify, you have not seen a profile
10 of John Ruelas?

11 A No, I have not.

12 Q I have no further questions, thank you ma'am.

13 THE COURT: Further questions?

14 MR. GABRY: No thank you, your Honor.

15 THE COURT: Ma'am, you may step down.

16 (witness excused at 11:48 a.m.)

17 MR. HILLER: Your Honor, People call Sylvia
18 Gill.

19 THE COURT: Ma'am come forward. Stop there
20 if you would, face this lady, raise your right hand
21 and be sworn

22 THE COURT CLERK: Do you solemnly swear or
23 affirm to tell the truth, the whole truth and
24 nothing but the truth?

25 MS. GILL: I do.

(witness sworn at 11:48 a.m.)

2 THE COURT CLERK: Have a seat right up
3 there.

4 THE COURT: State and spell both your first
5 and last names.

6 THE WITNESS: Sylvia Gill, that's S-y-l-v-
7 i-a G-i-l-l

SYLVIA GILL

DIRECT EXAMINATION

10 BY MR. HILLER

11 Q Ma'am by whom are you employed?

12 A The Bode Technology Group in Springville, Virginia.

13. Q How long have you worked for the Bode Group?

14 A About four and a half years.

15 Q Can you spell Bode for us, please?

16 A Bode is B-o-d-e.

17 Q What does the Bode Technology group do?

18 A They are a forensic DNA laboratory.

19 Q What do you for the Bode Technology group?

20 A I am a DNA analyst III and I work in the customized
21 casework group where I do DNA analysis on forensic
22 cases.

23 Q Can you tell the jury, please, your education since
24 college?

1 A Yes, I attended Vaser College where I received a
2 bachelors of Arts in biology in 1998 and I've gone
3 to the George Washington University in Washington
4 D.C. and I received a Master Forensic Science
5 degree in concentration on forensic molecular
6 biology in 2002.

7 Q Did you receive training from Bode to do DNA
8 identification work?

9 A Yes, I did.

10 Q Can you briefly describe that training for the jury,
11 please?

12 A Sure. There's about a six month training period for
13 each of the six groups that I have been involved
14 with. The first group was a convicted offender data
15 banking group and that was six months of training in
16 which we had trial samples. I observed other
17 analysts doing the work and then I had--I did the
18 work myself and they observed me and then I had a
19 competency test with sort of a mock set of samples
20 and then after that I was able to work on official
21 samples. Then when I worked with the customized
22 casework group, I went through the same process
23 again only slightly different kinds of procedures
24 that observed--was observed doing and then I had a

1 different test that I did before being able to work
2 on the casework samples.

3 Q Approximately how many DNA samples have you
4 processed?

5 A In the convicted offender data banking group, I was
6 part of a team and we did about 15, 000 samples.
7 There were saliva and blood samples. I've also
8 worked on the World Trade Center victim
9 identification group and as a team we processed
10 upwards of about 20,000 samples. The majority of
11 these were bone fragments. We've also done tissue
12 extracts and the family reference samples, and then
13 in the customized casework group, I've worked on
14 over 50 cases.

15 Q 15,000 samples from the convicted offender group and
16 20,000 samples from the World Trade Center-

17 A Correct.

18 Q --just to be clear, you didn't do all of those?

19 A No. No, it was as a team that we did all of this.

20 Q Do you have a ball park estimate as to how many--

21 A Personally?

22 Q --tests that you have personally done?

23 A Because we worked as a team, we would have different
24 responsibilities at different part of the testing
25 so, at some point I was involved with all 20,000

1 samples, but it wasn't necessarily me taking all
2 20,000 together, so, personally maybe a quarter of
3 that.

4 Q So that's still in the World Trade Center--so about
5 5,000--

6 A About 5,000.

7 Q --samples? Did you also recent give assistance in
8 the effort to identify Tsunami victims?

9 A Yes, I did. I was sent to Butech, Thailand in
10 February of this year to help set up there DNA
11 process which included setting up their procedures
12 that they would need to ship the samples to the
13 laboratory that was going to do the testing on the
14 victims and also the standards that they need to
15 review that data and then how--what our standards
16 were for an official match.

17 Q Have you testified as an expert in DNI-DNA
18 identification in Court before?

19 A Yes, I have.

20 Q How man occasions?

21 A Two prior occasions.

22 Q Where was that?

23 A I testified in Montana in October of 2004 and also
24 in Cleveland, Ohio in 2005--May of 2005.

1 MR. HILLER: Your Honor, I would offer Ms.
2 Gill as an expert in the area of DNA identification.

3 THE COURT: Any objection.

4 MR. GABRY: From the standpoint, your
5 Honor, that we are dealing with a specialized form
6 of DNA analysis here and I haven't heard any
7 applications relative to what we call the YSTR
8 process, so at this point I object.

9 THE COURT: I am going to allow her to give
10 expert testimony, that doesn't mean you don't have
11 to lay foundations for her opinions.

12 BY MR. HILLER

13 Q Since it's been brought up, what is YSTR testing?

14 A YSTR testing is testing of the "Y" chromosome, which
15 means this is a male specific form of DNA testing.
16 Basically the STR markers that we are looking at are
17 all on the "Y" chromosome.

18 Q The--how is YSTR testing different than regular STR
19 testing?

20 A There's two main differences. The first is how the
21 "Y" chromosome is actually inherited and the "Y"
22 chromosome is actually passed down on the paternal
23 line. Meaning, the father will pass on to all of
24 his male children his "Y" chromosome. Therefore, his
25 YSTR pattern is being passed on intact to all of his

1 male children. The other way that it is different is
2 how we determine the statistical significance of a
3 YSTR match and it's reduce in power because that
4 same profile is passed down and we know that there
5 are multiple individuals that will have that same
6 YSTR profile.

7 Q In other words, grandpa has the same YSTR profile as.
8 dad as all sons?

9 A That's correct.

10 Q The technology, the way in which the profile—the way
11 you process evidence to find this profile, to
12 discover the profile, does that differ in any way
13 from regular STR testing?

14 A No, it does not. It is the same basic principles.
15 this is just a slightly different application than
16 conventional STR testing. The samples, when they are
17 received for STR testing, will still go through DNA
18 extraction. They will still be amplified using the
19 pulmonary chain reaction. Instead of STR markers
20 throughout the entire DNA its actual markers only on
21 the "Y" chromosome . We will go through the
22 separation process to separate the different
23 fragments and then the same analysis process. For
24 the statistical side of things, there is a kind of
25 DNA testing called mitochondrial DNA testing, and

1 this is DNA that is passed along a maternal line,
2 meaning mother to child and that's also passed on
3 intact, the same sequence is seen between mother and
4 child and the statistic that we apply for that are
5 the same that we use for the mitochondrial DNA.

6 Q Now, did you receive any evidence from Dr. Milligan
7 at the State Police laboratory in connection with
8 the investigation of the Michigan State Police
9 laboratory case number 728-69?

10 A Yes, we did.

11 Q When and what did you receive?

12 A May I refer to the case file?

13 Q If it would help to refresh your memory, of course
14 you could.

15 A Yes, it would.

16 Q Do you have it with you?

17 A Yes. So, on our chain of custody we received the
18 evidence at Bode on February 25, 2005. We received
19 four items. The first time was given the
20 identification number 2S05-063-01 and that was a
21 tube containing the extract from the stocking and
22 cutting for area "C". Item 02 was the associated
23 reagent blank for that extract. Item 03 was the
24 buckle swabs identified as from being from Gary
25 Leiterman. Item 04 was an envelope with a cutting

1 identified as the stocking in cutting number four in
2 area "C".

3 Q What is reagent blank?

4 A The reagent blank is a control that--basically all
5 the regions that you use in DNA extraction will go
6 in a separate tube, by themselves with everything
7 except the DNA. This is just a control that those
8 reagents are clean of any foreign DNA.

9 Q Did you do any testing on this evidence?

10 A Yes, I did.

11 Q What did you test, first of all?

12 A I did YSTR testing on the extract that I received
13 and also on it's associated region blank; When I was
14 finished doing that testing, I went to the reference
15 sample for Gary Leiterman and did a YSTR testing on
16 that sample.

17 Q Now, what is the value of YSTR testing as opposed to
18 regular STR testing?

19 A YSTR testing is great for samples when you have a
20 mixture between a female and a male and especially
21 in a case where you female DNA overwhelms the amount
22 of male DNA that is present in that sample. When you
23 do a conventional STR testing, what you are actually
24 going to detect is only that female profile and it
25 will end up masking any male DNA that is present in

1 the sample, So, the YSTR testing, because females
2 don't have "Y" chromosomes, completely ignores
3 however much DNA is present in that sample and will
4 just target that male DNA--male DNA profile.

5 Q Were you able to obtain a YSTR profile from the
6 evidence--the extract from the stocking that you
7 received?

8 A Yes, I was.

9 Q How many loci does the YSTR testing test?

10 A It looks at twelve different loci.

11 Q Were you ale to develop a full profile off of the
12 stocking?

13 A No. I obtained a partial profile from the extract
14 off the stocking.

15 Q At how many loci were you able to develop a profile?

16 A Eight of those loci were reportable.

17 Q Were you also able to develop a profile from the
18 known sample of Gary Leiterman?

19 A Yes, I was.

20 Q Was that a full profile?

21 A Yes, it was.

22 Q At the DYS385 loci, is it normal to report two
23 alleals as opposed to one?

24 A Yes, it is. This is a special locus that we look at
25 because it is on the "Y" chromosome in two different

1 physical locations, so it's the same-385--DYS385 and
2 we use the same primers to target it but those
3 primers with actually sit down in two different
4 locations and we call those locations "A" and "B".
5 If the length of the particular STR marker is the
6 same, you may actually be able to receive only one
7 peak at that location, but if the length is
8 different between "A" and "B" you will get two peaks
9 or alleals at that location.

10 Q At which loci were you able to obtain a profile for
11 the extract from the stocking?

12 A May I refer to the case report for that?

13 Q If it will help refresh your memory, yes.

14 A Yes, it will. For the extract?

15 Q Yes.

16 A I received reportable results fro DYS391, DYS389-I,
17 DYS 439, DYS3892--I'm sorry can I correct myself, it
18 is DYS3891, I apologize.

19 Q It's roman numeral--

20 A Roman numeral one, yes. DYS439, DYS389 Roman numeral
21 two, DYS 438, DYS 437, DYS19 and DYS393.

22 Q There are three other locations that you test at,
23 what were you able to find at those locations?

- 1 A At DYS 392 we obtained no results at that location.
- 2 At DYS390, we did get a peak but it was below our
- 3 reporting standards. At DYS385 it was inconclusive.
- 4 Q What is the difference between inconclusive and
- 5 below reporting standards?
- 6 A At DYS390, we expect a single peak and it just fell
- 7 below our cut off, it wasn't strong enough to be
- 8 reported. At DYS 385, we obtained two peaks,
- 9 however, they weren't in balance with each other, so
- 10 the one was much stronger than the other one so we
- 11 called it inconclusive.
- 12 Q Now, those results, could that be--what might
- 13 explain those results, the no finding at DYS392, the
- 14 peak below reporting thresholds at DYS390 and the
- 15 inconclusive at DYS 385 the imbalanced peaks?
- 16 A Sure. A lot of time with forensic samples their
- 17 often old or they don't have a lot of DNA in them,
- 18 so depending on the condition of the DNA sample,
- 19 itself we may not have enough DNA to produce a full
- 20 profile or that DNA may be slightly degraded
- 21 depending on how it was stored, the environmental
- 22 conditions its been subjected to and just time in
- 23 general.
- 24 Q But you were able to obtain a profile at the other
- 25 eight locations that you described for us?

1 A Yes, I did.

2 Q And I believe you indicated that you were able to
3 obtain a full profile at all twelve location for the
4 known sample of Gary Leiterman?

5 A Yes, I did.

6 Q Did you compare those two profiles, the partial
7 profile from the stocking and the known profile of
8 Gary Leiterman?

9 A Yes, I did.

10 Q Can you tell us, please, what the result of that
11 comparison was?

12 A That the two profiles were a match.

13 Q And when you say a match what do you mean?

14 A It means that at all of the overlapping loci, they
15 were both consistent with each other. If there was a
16 ten at DYS391, there was a ten at the reference
17 sample as well. In addition, if there were peaks
18 that were below our reporting standards that we
19 couldn't use in statistics but were still present,
20 we check for consistency between the evidence sample
21 and the reference sample just to make sure that we
22 couldn't possible exclude someone, so we just take
23 the conservative route with that.

1 Q So at the eight locations you were able to get a
2 reportable result on the stocking, the known sample
3 of Gary Leiterman matched at all eight?

4 A Yes.

5 Q At the other locations, you found nothing to exclude
6 him?

7 A Correct.

8 Q When you find a profile, is there a data base that
9 you check to find the frequency of that profile in
10 the population?

11 A Yes, there is.

12 Q Did you check--where does that data base come from,
13 by the way?

14 A The database comes from the Promaga Corporation
15 which is the corporation that actually developed the
16 particular YSTR system that we use.

17 Q Has that database been statistically validated?

18 A I believe it has been published. I would go to
19 Promaga for more additional information on that
20 database.

21 Q Is this the data base that you use to do your
22 testing--your YSTR testing in your lab?

23 A Yes.

24 Q All right. When you check a profile against the
25 database, what are you looking for?

1 A A method that we use for YSTR testing is called the
2 counting method and we're basically trying to
3 determine the rarity of a YSTR profile in the
4 general population. As you know, more than one
5 individual has this particular profile, you want o
6 see if there's multiple--if it's rare or if it's
7 common. So, what we are actually doing is searching
8 the data base which is generated from unrelated male
9 individuals that are randomly selected from
10 different ethnic groups around the region--around
11 the U.S. and counting how many times our YSTR
12 interest shows up in the data base. If it shows up
13 on multiple occasions, then it's considered more
14 common and if it doesn't show up at all, it is
15 considered more rare.

16 Q In this database how many individuals are included?

17 A There is a total of 4,004 individuals across
18 different ethnic groups.

19 Q What were the result so your comparison of the data
20 base and--which sample--which profile, but the way,
21 did you check? Did you check the known sample of
22 Gary Leiterman or the sample off the stocking?

23 A I actually did a search for both of the profiles. I
24 could only search the partial, reportable alleles

1 from the stocking and the full profile from Mr.
2 Leiterman.

3 Q What were your results?

4 A There were zero observations across all of the
5 different ethnic groups. So zero out of 4,004 for
6 both the evidence stocking--the extract from the
7 stocking and the reference sample.

8 Q What can we conclude from that?

9 A In conclusion, Mr. Leiterman can not be excluded
10 from a donor of the male DNA in that extract from
11 the stocking.

12 Q The DNA profile that you found was it common or was
13 it an unusual profile?

14 A It was rare because there were zero observations of
15 that profile.

16 Q Thank you ma'am, I don't have any other questions
17 for you.

18 THE COURT: Cross examination.

19 MR. GABRY: Thank you, your Honor.

20 CROSS EXAMINATION

21 BY MR. GABRY

22 Q Ma'am when you break that 4,000 down into ethnics,
23 race, I understand that basically, as far as male
24 Caucasians you are looking at 1,032?

25 A May I check the report, please?

1 Q Sure.

2 A Thank you.

3 Q 1,311?

4 A That sounds correct. Yes, 1311.

5 Q So that means that out of 1,311 profiles from our

6 planet, Mr. Leiterman's hasn't been seen in that

7 group?

8 A I believe that actually the Caucasian—all the

9 samples are from the U.S.

10 Q Okay.

11 A So, yes, out 1,311 his profile has not been seen.

12 Q How many men live in the United States?

13 A Well, the way that a database—I don't know how many

14 men are in the States, but the way that the database

15 is formed is much like medical testing. When they

16 develop a new drug you randomly select a group of

17 people to be given that drug. You can't administer

18 the drug to everyone in the United States to see how

19 that would react, but you try to get a good sampling

20 to determine how they will react to a new drug

21 before it is released. It is a similar concept with

22 the way we work with our database.

23 Q If your data results showed a ten at DYS392 were

24 you have no result, what impact would that have on

25 your conclusion?

1 A If it had showed a ten, it would have been an
2 exclusion.

3 Q So, we don't know, since we don't know what the NR
4 was whether or not that is no result, correct?

5 A That's no result.

6 Q We're not able to say that Gary Leiterman is a match
7 to this entire profile, are we ma'am?

8 A He matches at all of the loci where we did get
9 results for.

10 Q I understand that. He matches were you have results,
11 but there are places were you do not have results?

12 A We have the one location were we have no results.

13 Q Actually, looking at that then, based on your
14 explanation of DYS385, is we are looking for twelve
15 peaks?

16 A Correct.

17 Q And you're able to match Mr. Leiterman at eight of
18 those twelve peaks?

19 A Correct.

20 Q And that is through your--you don't use what they
21 call the product rule for this type of statistics?

22 A No, you can't apply the product rule because all of
23 these STR markers are linked together when they are
24 inherited. So, there is no shuffling of DNA between
25 mother and father and the child, it's just all

1 linked together and when the STR loci are linked
2 together you can not use the product rule.

3 Q And that's why we do the counting--

4 A Correct.

5 Q --just looking how many are in the data base and
6 seeing if its there?

7 A Right.

8 Q Now, I also understand that you develop the YSTR
9 profile from is the same extract that was created by
10 the Michigan State Police.

11 A That's correct. That was at their request.

12 Q They did provide, to you, a sample of a cutting from
13 that same area, correct?

14 A I believe so. I didn't open that packaging.

15 Q In the report that indicates what material was
16 supplied, I see that whatever TBTG number is
17 2S0506304 is described as labeled an enveloped
18 containing cutting identified as stocking cutting
19 number four area "C"?

20 A Correct.

21 Q That was not tested by Bode independent of the
22 extract, is that correct?

23 A I was requested to test the extract and determine if
24 I could get a YSTR profile from the extract before
25 going to the cutting.

1 Q . And we obtained a partial profile--

2 A Correct.

3 Q --of the--that portion of the "Y" chromosome?

4 A I obtained a partial YSTR profile from the extract.

5 MR. GABRY: Thank you. That is all I have,
6 your Honor.

7 THE COURT: Anything further?

8 RE-DIRECT EXAMINATION

9 BY MR. HILLER

10 Q What became of the evidence, the cutting of the
11 stocking? What did you do with it?

12 A Actually, I never opened the packaging at all and I
13 returned it--it was returned to the Michigan State
14 Police.

15 Q Okay. Regarding the use of the extract versus the
16 use of the stocking, what instruction or what was
17 the request of the State Police regarding the
18 testing?

19 A It's actually a fairly common practice if there's an
20 original evidence sample and also a remaining
21 extract from previous testing, it's not uncommon for
22 us to get a request to do a different kind of DNA
23 testing on that same extract or even repeat DNA
24 testing on a particular extract. With the interests

1 of just conserving the evidence and not using it up
2 when you don't need to.

3 Q If you had tested that piece of stocking it would
4 have used up some or all of what was on the
5 stocking?

6 A Correct.

7 Q Now, Mr. Gabry talked to you about the database and
8 the profiles in the data base and he talked about
9 the Caucasians—the numbers for Caucasians as being,
10 I think you said 1,311 profiles in the database for
11 Caucasians?

12 A Correct.

13 Q The purpose for checking the database is what?

14 A Is to determine if a particular profile is common or
15 rare in the general population. The idea being, if
16 there is a common profile out there and you're doing
17 your random sample, you're going to hit it at some
18 point and it will end up in the data base.

19 Q Is it to gauge the likelihood that another random
20 person is the person who left this evidence?

21 A Correct.

22 Q So if we limit our review of just Caucasians, then
23 aren't we making an assumption that the person—this
24 random person that we are looking for is also
25 Caucasian?

1 A That's correct. That's why when we do our database
2 search we look at all the ethnic groups.

3 Q When we look at all the ethnic groups put in the
4 data base that is something over 4,000 groups?

5 A Correct.

6 Q 4,004?

7 A 4,004.

8 MR. HILLER: Thank you, no further
9 questions.

10 THE COURT: Further questions?

11 RE-CROSS EXAMINATION

12 BY MR. GABRY

13 Q As far as Gary Leiterman, if a person by that name
14 was Black, Hispanic, Asian, or Caucasian, you don't
15 know at that time, correct?

16 A Oh, I don't know, no.

17 MR. GABRY: Nothing further, your Honor.

18 THE COURT: You may step down.

19 (witness excused at 12:18 p.m.)

20 MR. HILLER: Your Honor, may Ms. Gill be
21 excused?

22 THE COURT: Yes. We are going to break at
23 this time.

24 MR. HILLER: Is it possible to approach?

25 THE COURT: You have a short witness?

1 MR. HILLER: I have a short witness.

2 THE COURT: Let's see how far we can get,
3 call him.

4 MR. HILLER: Orville Hamilton.

5 THE COURT: Sir, walk up here. Face the
6 clerk, raise your right hand and be sworn.

7 THE COURT CLERK: Do you solemnly swear or
8 affirm to tell the truth, the whole truth and
9 nothing but the truth.

10 MR. HAMILTON: Yes, I do.

11 (witness sworn at 12:19 a.m.)

12 THE COURT CLERK: Have a seat right up
13 there.

14 THE COURT: State and spell your first and
15 last name.

16 THE WITNESS: Orville Hamilton, O-r-v-i-l-
17 l-e Hamilton, H-a-m-i-l-t-o-n.

18 ORVILLE HAMILTON

19 DIRECT EXAMINATION

20 BY MR. HILLER

21 Q By whom are you employed, sir?

22 A I'm sorry, sir.

23 Q I'm sorry, by whom are you employed.

24 A Michigan State Police.

25 Q In what capacity?

1 A I'm a Trooper. I was--just came off assignment with
2 the fugitive team--fifth district fugitive team.

3 Q How long have you been a Trooper for the State
4 Police?

5 A Five years.

6 Q On November 23, 2004, what was your assignment?

7 A We were assigned surveillance in the Gobles area.

8 Q That's something that the fugitive team does
9 regularly?

10 A Yes, sir.

11 Q At some point were you called to the Paw-Paw post to
12 assist other State officers?

13 A Yes, sir. Detective Sergeant John Schuler and I
14 were requested to go to the Paw-Paw post to assist
15 in searching a vehicle.

16 Q Do you recall what vehicle you searched?

17 A A 1999 Mercury Mainer that was white in color and
18 was registered to a Gary Leiterman.

19 Q During your search did you locate any bullets in the
20 vehicle?

21 A Yes, sir, I did.

22 Q Where were they found?

23 A They were located in the door pocket of the driver's
24 side door.

1 Q As a State Police officer, you're familiar with
2 firearms?

3 A Yes, sir.

4 Q Did you look at these bullets?

5 A Yes, sir, I did.

6 Q Were you able to make any observation as to what
7 caliber they appeared to be?

8 A They appeared to be a 22- caliber long rifle rim
9 fire.

10 Q I'm going to show you Peoples exhibit number 82, do
11 you recognize those?

12 A Yes, sir, I do.

13 Q What are those?

14 A These are the 22-caliber bullets that we located in
15 the door of the vehicle we searched.

16 Q I'm sorry, what year was that vehicle?

17 A 1999.

18 MR. HILLER: Your Honor, I move for the
19 admission of People's exhibit 82.

20 THE COURT: Any objection?

21 MR. GABRY: No, your Honor.

22 THE COURT: 82 is admitted.

23 BY MR. HILLER

24 Q Did you point those bullets out to Detective
25 Sergeant Denise Powell?

1 A Yes, sir, I did.

2 MR.HILLER: No further questions, thank
3 you.

4 THE COURT: Cross examination.

5 CROSS EXAMINATION

6 BY MR. GABRY

7 Q Mr. Hamilton, if I understand this correctly, in
8 2004--in November, you searched a 1999 SUV?

9 A It was a minivan. A Mercury Mariner, it looked more
10 like a minivan than an SUV, yes.

11 Q In this 1999, in 2004, you found three 22-caliber
12 rounds?

13 A Correct.

14 Q Is 22-caliber any type of unique or unusual round?

15 A No, sir.

16 Q Sold at numerous locations around the State?

17 A Yes, sir.

18 Q Were there anything unusual about those rounds,
19 other than they were in this car in 2004.

20 A No, sir.

21 MR. GABRY: Nothing further, your Honor.

22 MR. HILLER: No re-direct.

23 THE COURT: You may step down, you are
24 excused.

25 (witness excused at 12:23 p.m.)

1 MR. HILLER: Thank you, your Honor.

2 THE COURT: That was short. All right
3 ladies and gentleman, we are going to recess for the
4 day. Tomorrow our schedule will be as it was last
5 Wednesday. We will start at eight o'clock and go to
6 12:30, take for you a somewhat extended lunch and
7 then reconvene in the afternoon. Remember my
8 instructions about the case; you are excused until
9 eight a.m. tomorrow morning.

10 THE LEGAL CLERK: All rise, please.

11 (Court concluded at 12:24 p.m.)

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1 STATE OF MICHIGAN)

2 COUNTY OF WASHTENAW)

3

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5 I certify that this transcript, consisting of 157
6 pages, is a complete, true, and correct transcript to the
7 best of my ability, of the proceedings held in this case
8 on Tuesday, July 19, 2005 before the Honorable Donald E.
9 Shelton, Circuit Court Judge.

10

11 DATED: February 28, 2006

12

13

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