

1 STATE OF ILLINOIS)
)
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS)
)
7 -VS-) No. 00 16901
)
8 GEOFFREY GRIFFIN)

9 REPORT OF PROCEEDINGS in the above-entitled
10 cause taken before the Hon. FRED G. SURIA,
11 Judge of said court, on April 5, 2004.

12 PRESENT:

13 HON. RICHARD A. DEVINE,
14 State's Attorney of Cook County, by
15 MR. ROBERT HOVEY and MR. EDWARD MALONEY,
16 Assistant State's Attorneys,
17 MS. KATHERINE LAWRENCE,
18 Assistant Attorney General,
19 representing the People;

20 MR. EDWIN A. BURNETTE,
21 Public Defender of Cook County, by
MS. JEAN HERIGODT and MR. GREG O'REILLY,
Assistant Public Defenders,
representing the Defendant.

22 Victoria A. Ondriska
23 Official Court Reporter
24 #084-001457

22

23

24

1

1 DATE: 4-5-04
2 PAGES: 1-97

2

3

I N D E X

PAGE

4

Dr. Barbara Llewellyn, Direct examination 21

5

Dr. Barbara Llewellyn, Cross-examination 26

6

Dr. Barbara Llewellyn, Re-direct examination 29

7

Dr. Barbara Llewellyn, Re-cross examination 30

8

Dr. Barbara Llewellyn, Re-direct examination 33

9

Dr. Barbara Llewellyn, Cross-examination 48

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

2

1

2

THE CLERK: Griffin.

3

MR. HOVEY: For the record, Robert Hovey,

4

H-o-v-e-y, and Edward Maloney on behalf of the People.

5 Judge, also I think for purposes of the motion

6 --

7 MS. LAWRENCE: Katherine Lawrence, Assistant
8 Attorney General, on behalf of the Illinois State
9 Police.

10 MS. HERIGODT: Jean Herigodt joined by Greg
11 O'Reilly, Cook County Public Defender's Office.

12 THE COURT: I did tender to the Defense some
13 discovery this morning. I think there's a copy there
14 for the State.

15 MS. HERIGODT: Yes, Judge. Some of those were
16 reports that we didn't have, but they were not relevant
17 to the subpoena. They were -- they were drug analysis
18 reports.

19 We had some initial reports, and then there
20 were some follow-up reports on the drug analysis of the
21 crack pipe and also of a pill container labeled bioxin
22 (phonetic).

23 I'll tender the State's copy to them.

24 But it's not in compliance with the subpoena

1 which was for footprint analysis.

2 THE COURT: There is a difference.

3 MS. HERIGODT: Yes.

4 THE COURT: Okay.

5 I assume that you and the State can work that
6 out by simple call to them?

7 MS. HERIGODT: I assume we can.

8 MR. MALONEY: Yes, Judge. I was made aware of
9 that this morning, so --

10 MR. HOVEY: Judge, there is a motion filed by
11 the Defense that we believe necessitates a hearing, and
12 we have our witness available today.

13 I don't know if you have a copy of the motion,
14 and we can address it.

15 THE COURT: The motion is --

16 MS. HERIGODT: That's for a DNA database
17 search, Judge, of the fingernails, the profile found of
18 the fingernails of the victim which exclude Mr. Griffin,
19 and so there is this open profile, Judge.

20 And we're requesting that it be placed in the
21 DNA database for the search to determine the possible
22 identity of the persons whose DNA is under the
23 fingernails of the victim.

24 THE COURT: And the State is objecting?

4

1 MR. HOVEY: Yes, Judge.

2 Essentially, the reason being there is -- what
3 you are going to come to learn during this hearing is
4 the exhibits in question are 4 A and 4 B. 4 B refers to
5 the right hand fingernails and 4 A to the left.

6 And the issue with respect to these is that
7 with respect to one set of fingernails, it's an
8 incomplete profile. You need thirteen loci to make a
9 full profile. On one there's none. One of them there
10 is none. The only thing they have is they have a
11 profile that indicates a male: It's a male only. So

12 you would be putting that male only in the state CODIS,
13 and it requires six loci.

14 The second set has four loci, two of which are
15 incomplete. Two of which are incomplete.

16 So you'll never get a match. You'll never
17 been able to exclude anyone, because while we can
18 exclude this defendant, those other individuals, it is
19 an incomplete profile off the fingernails. Two are
20 complete and two are incomplete.

21 And at the end of the day, at the end of the
22 day, should the lab be ordered to do this -- and we are
23 prepared to put on live testimony indicating reasons why
24 it shouldn't be -- the best case scenario is all the lab

1 would only be able to say, the incomplete profile on the
2 one set of fingernails would appear in the general

3 population anywhere from 1 out of 47 male individuals up
4 to about 147. So it will never yield any probative,
5 material or relevant results, because it's incomplete.

6 It's analogous to fingerprint comparison. You
7 need so many points to make a comparison. We don't have
8 that.

9 If you have a license plate, seven digits on a
10 license plate and we only had two, three. So then it
11 would give us all the license plates with only two
12 digits, but we can never go beyond that.

13 What the Defense wants to do, I would suggest,
14 they want to take this DNA in this case and twist it
15 around and use it improperly by saying to the
16 fact-finder this DNA hit to however number of other
17 people were in the database based on this incomplete
18 profile. It's like it matches to every male with brown
19 hair and blue eyes. That is the analogy. It's simply
20 not relevant, it's not probative, and it's not material
21 to anything under the indictment, and it's not relevant.

22 And as I said, we are prepared to put on live
23 testimony indicating that.

24 The other part of the motion that is so

1 troubling, frankly, disturbing -- and I'll have to be
2 corrected on the record if I'm wrong -- but the other
3 thing the motion addresses is that they want the
4 victim's profile to be put in CODIS system as well, so
5 that profile will hit to whatever other incomplete
6 profiles are in there from the victim.

7 That is simply not relevant. Of course the
8 victim's profile will come off her own fingernails.

9 What we have is an attempt to twist the DNA.
10 As I have been addressing throughout this case, DNA is
11 what it is. It can be a wonderful tool, both in the
12 implication of offenders and in the exoneration of
13 offenders. Here we have where it doesn't help us on the
14 fingernails in either one of those two respects. It
15 doesn't help us towards building evidence against this
16 defendant.

17 Could I in good faith stand up, could I be so

18 foolish to stand up in front of a jury and to argue that
19 because Geoffrey Griffin is a male, and I know that the
20 only incomplete profile on one set of fingerprints is a
21 male, that the fact-finder should use that and make a
22 reasonable inference of it from his guilt? That takes
23 into account every single male in that CODIS system?

24 The same thing with the other set of

7

1 fingernails. It's incomplete. It doesn't help us. And
2 it's disturbing and troubling that the Defense is going
3 to try to use that now, use this wonderful tool
4 available to both sides and twist it so as to try to
5 build reasonable doubt.

6 I think what you will find at the conclusion
7 of this hearing, should you even feel that we have one
8 -- and I will note parenthetically as well, that the
9 statute by which this is governed applies only to

10 post-convictions, which clearly with respect to this
11 defendant we are not there yet.

12 But should this Court even decide to entertain
13 this, we're still stuck with the fact at the end of the
14 day, at the end of the day, the best our people -- and I
15 say "our people," because they are their people as well
16 as our people at the Illinois State Police crime lab --
17 the best they will say is, "Well, with respect to that
18 one set of fingernails, yeah, you'd find that 1 out of
19 every 45 to one out of 147 people." All it is is an
20 attempt by the Defense to twist DNA and take the
21 fact-finder away from the issues that are truly material
22 under the indictment and relevant to the issues of the
23 case.

24 If the Court decides to entertain the motion,

1 obviously, we'll be asking you deny it at the conclusion
2 of the hearing.

3 THE COURT: Does the Attorney General concur
4 with the State's argument?

5 MS. LAWRENCE: Yes, your Honor.

6 There is also another -- Katherine Lawrence
7 representing the Illinois State Police -- there is
8 another issue, how burdensome this would be on the lab.

9 There's a process of verification. Once -- if
10 we did this search and spit out the numbers, the lab has
11 to go back and verify, make sure that -- it's like a
12 quality control check to make sure the hits are actual
13 hits and not some sort of error. And the lab in
14 Springfield, the CODIS people, it would take them about
15 a week to do that.

16 There would also be a contemporaneous process
17 going on in the lab with Chicago with the case analysis,
18 and they would have to also go through and manually
19 verify these searches are accurate.

20 Once verification is done, only at that time
21 do names get attached to individuals who have hit.

22 It seems like in the defendant's motion they
23 want to be present from the very beginning standing by
24 the computer when the numbers come out. There is no

1 name attached at that time. And their motion just
2 doesn't take into account all the procedures and
3 verification processes that need to go before we can
4 accurately send out these, this large number of hits.

5 THE COURT: Thank you.

6 Mr. O'Reilly, do you concur with the State's

7 --

8 MR. O'REILLY: It would be soft to say I
9 disagree.

10 First of all, I'd refer your Honor to the
11 pleadings that have been filed in this court on the
12 case.

13 On Page 3 of the first motion for DNA database
14 search, what the Defense is requesting is what is given
15 by the statute, and that is upon motion by a defendant

16 charged with any offense. It's not a post-trial motion.
17 It was passed by the legislature last year to deal with
18 this specific situation.

19 What the statute says is that if evidence can
20 be material, material, excuse me, if the evidence could
21 be material to an investigation or relevant to trial,
22 the defense is allowed to do a DNA database search.

23 This was adopted from Chapter 3 of the
24 Governor's Task Force report on reforming the death

1 penalty. And the language spoke to this exact
2 situation.

3 In the Governor's report they stated that the,
4 one of the reasons why such searches should be made is
5 to see if other suspects might have contributed to the
6 DNA. That's right in the language of the Governor's
7 report adopted by the legislature, passed in November.

8 And it gives two situations. One, is it's
9 material to an investigation as it is in Geoffrey
10 Griffin's case. And, two, if it's relevant at trial.

11 The statute also says -- and Judge, I filed
12 with your Honor a brief page on statutory construction.
13 I think we should look at the statute. As a matter of
14 law, we are entitled to this search, period, it's our
15 position.

16 First, the statute clearly states that if it's
17 material to the investigation or relevant at trial, we
18 get the search of the state database.

19 If we ask for a search of the federal
20 database, that's in another section of the statute, then
21 we have to comply with the conditions of the federal
22 lab.

23 The legislature expressed clearly that
24 conditions can be put on a search from a federal lab,

1 but they expressly did not put that concerning the State
2 Police lab.

3 So the legislative intent is clear.

4 And I cite some cases, and I, but the basic
5 one is Point 5, the cardinal rule of statutory
6 (inaudible) is this old phrase, *expressio unius est*
7 *exclusio alterius*. I'm mispronouncing that. It means
8 the enumeration of certain matters in the statute, like
9 the conditions, they can put conditions on us for the
10 federal search. They put those on the State search.
11 The legislature enumerated the limit for the federal
12 searches. No such limit for state searches, implying
13 that there is --

14 THE COURT: If we were to use the federal
15 rules, it would support the State's position?

16 MR. O'REILLY: Correct, Judge.

17 THE COURT: Go ahead.

18 MR. O'REILLY: Here's one reason why.

19 In the Flewellen case, for example, these
20 cases were considered by the Governor's commission, a
21 database produces a match to somebody in a convicted
22 offender database.

23 So I want to be clear what we are asking for,
24 because we have interviewed Barbara Llewellyn and Don

12

1 Parker, and this is from interviewing them.

2 This is my position right now. There is
3 something called a convicted offender database, and we
4 are asking that the right fingernails 4 A 1 B searched
5 against the convicted offender database. In fact, we
6 understand there was a meeting where Mr. Parker deduced
7 a male profile that could be searched against this. He
8 told us it was at four locations.

9 Now, there is a policy that they had, they
10 didn't want to search, they wanted to search only if it
11 was six or above.

12 But I direct your Honor's attention to two
13 things before we discuss issues, more substantive

14 issues.

15 First, this Court entered an order in this
16 case on November 5th, 2001. I'd ask you to take
17 judicial notice, look in the file -- but this is your
18 order, Judge. It was in this case on a different piece
19 of evidence. It was a vaginal swab.

20 And two years ago on this same case, your
21 Honor ordered and they agreed to test it at three
22 locations. Okay? Three locations.

23 They then sent us a letter, a copy to
24 Mr. Maloney which I also tendered him last time where

1 they said they searched the three locations, and the
2 last paragraph is they continually searched at three
3 locations on this other profile.

4 Now, that is in '01, and they have been
5 continually searching. So I assume they're continually

6 searching at three locations to see if someone in the
7 convicted offenders database which doesn't match
8 Geoffrey Griffin, and they're still doing this, they
9 say, at three locations.

10 The issue today is that on her right
11 fingernails, it's not the victim; it's not Geoffrey
12 Griffin; it's a male. And Don Parker says he can locate
13 four, which is one more than that test, that search
14 they're already undertaking.

15 So what we are asking, and we filed a
16 supplemental motion on the last court appearance that
17 under this new statute we continue doing what your Honor
18 ordered and what they were, they are continually doing,
19 which is a search at more than three loci for the
20 vaginal swab, and that we want the same thing done for
21 the male DNA found under her right fingernail.

22 And a point of correction, Judge.

23 I didn't explain clearly, there are different
24 kinds of databases. There is an unsolved crime database

1 and there's a convicted offender database.

2 Now, we are only requesting, Judge -- the
3 statute allows searches of both -- we are only asking
4 for the unsolved, I mean, for the convicted offender
5 database, which means there will be fewer hits. And
6 when they hit they can be eliminated. These candidate
7 matches they call them, they can be eliminated by
8 looking on the screen and they can see if it's a match
9 or just that it can be excluded. And that's based on my
10 interviews with their two experts.

11 Not only that, Judge, but the situation is
12 that we're looking for an investigative lead, which is
13 what the statute says we can do. Like in Flewellen,
14 where the, when they got that investigative lead it led
15 to a guy who was on Death Row for some serial killings.

16 We are looking for an investigative lead to
17 see if the DNA under her fingernails or the DNA in the
18 vagina matches someone who's been convicted of a felony
19 in Illinois. And then we take that lead and further our
20 investigation to see if we can find out who it is.

21 Because it would be relevant if it's somebody
22 that lived in the neighborhood, that has been convicted
23 of sex crimes. That is a lead we need. That can be
24 gained by searching the right fingernail scrapings and

15

1 the vaginal swab at four loci or more for the convicted
2 offender database.

3 As to the burden, I think we can speak to that
4 with the witness. Because I have no objection to
5 examining this witness, because I believe when you hear
6 from the witness it will support our contention.

7 But I wanted to put -- I just want to be
8 clear. Our position is that as a matter of law and
9 statutory conclusion, it's plain, we are entitled to
10 this search. Only if we were asking for a federal, what
11 they call NDIS, national search, then those conditions,

12 their concerns would apply.

13 MR. HOVEY: Judge, I have two brief comments.

14 First of all, the statutory construction, if
15 you look at Page 569, the whole article under which this
16 is covered is entitled Post-trial Motions.

17 Be that as it may, the fact of the matter is
18 that order that was entered in 2001, if I'm not
19 mistaken, spoke to three loci. We don't even have that
20 here. Mr. O'Reilly knows that. We have two complete
21 loci and two incomplete. So we are not even at the
22 three loci points.

23 And the fact of the matter remains that at the
24 end of the day, if this order is put in, that's all we

1 are going to be able to tell us. We are never going to
2 be able to lead to another person, because at best it
3 will be 1 out of every 47 or 1 out of every 147, which

4 is going to cover a tremendous amount of people in the
5 convicted offender database. So it's not what the
6 legislature had in mind.

7 And what he's talking about on those cases,
8 the Flewellen case -- and I have been involved in cases
9 where DNA has implicated as well as exonerated people.
10 I just finished a six-month investigation on a
11 seventeen-year-old case -- and what I'm suggesting to
12 the Court what should be done with those death penalty
13 rules and how they should be interpreted is from the
14 common sense construction standpoint, and that is this.
15 If we had a full profile of at least six loci, then the
16 State Police would not be standing here saying the
17 difficulty with the search.

18 We don't have that here. We have two
19 incomplete and two complete. And it's never going to
20 give probative, material results for relevant issues.

21 MR. O'REILLY: And we believe it will, that
22 it can provide an investigative lead, which is what we
23 are seeking.

24 THE COURT: Let me say this. I'm a novice at

1 the area of DNA. It's been with us for some time. We
2 are now refining it down to the finer points of which
3 I'm not familiar.

4 We have experts here that will, I hope,
5 assist.

6 For that reason I'll hold a hearing, let the
7 experts try to understand what each of you are seeking
8 and why there is an objection.

9 With that in mind, if both sides are ready --

10 MR. HOVEY: Judge, may I have five minutes
11 with Miss Llewellyn?

12 MS. HERIGODT: Judge, there is also an
13 argument on the State's motion to introduce other crimes
14 evidence.

15 We can certainly hold that after the
16 evidenciary hearing.

17 THE COURT: Sure. That's fine.

18 (Whereupon the above-entitled

10 We're going to take the evidence now
11 concerning the issues as set forth.

12 Is the Defense agreeing that the State proceed
13 to showing their position, or do you wish to present?

14 MR. O'REILLY: I'm sorry?

15 THE COURT: Do you wish to present the
16 witnesses, or you wish the State to present with
17 witnesses?

18 MR. O'REILLY: I believe he's objecting. I'll
19 let him proceed.

20 MR. HOVEY: Before we begin, I have a motion
21 to exclude witnesses.

22 THE COURT: So ordered.

23 MR. HOVEY: I would ask you to ask Counsel,
24 there is a gentleman in the second row in the blue sport

1 coat. He's refused to identify himself to me. I

2 believe he's an expert working in conjunction with the
3 Defense. Therefore he's a possible witness in the case.

4 So I'd ask that he be excluded during
5 Dr. Llewellyn's testimony.

6 MR. O'REILLY: Judge, we have a consultant as
7 part of the Defense team.

8 There are no witnesses in the --

9 THE COURT: If he is not a witness, he's
10 welcome to stay.

11 MR. HOVEY: I would ask you to ask him his
12 name.

13 THE COURT: Certainly.

14 MR. HOVEY: So I'll note if he's called, that
15 he's not biased on any DNA currently pending.

16 He may in his right mind think he's not going
17 to be a witness today.

18 The problem is, we have other DNA being
19 tested, and this gentleman may be a witness, and
20 therefore he should be reflected.

21 So I would at least ask that he be identified
22 should he be called in the future.

23 MR. O'REILLY: I'm sorry. I thought I told
24 you -- Sandy Zabell, Z-a-b-e-l-l.

17

BY

18

MR. HOVEY:

19

Q. Would you state your name for the Court,
20 please, and spell your last name, please?

21

A. Certainly.

22

My name is Barbara Llewellyn,

23

L-l-e-w-e-l-l-y-n.

24

Q. And Dr. Llewellyn, what is your current job?

21

1

A. I'm the statewide DNA technical leader for
2 the Illinois State Police.

3

Q. Could you tell us what your educational
4 background is, beginning with your Bachelor's degree and
5 concluding with your Doctoral?

6

A. I have a Bachelor's of Science in Biology
7 with a minor in Chemistry from the University of Mary

8 Harden Baylor (phonetic), in Texas. I have two master.
9 I have a Master's in Forensic Science and a Master's in
10 Human Genetics from Virginia Commonwealth University in
11 Richmond, Virginia. And I have an a PHD in Forensic
12 Science with a specialty in Molecular Biology from the
13 University of Stratside (phonetic) in Glasgow, Scotland.

14 Q. Dr. Llewellyn, I want to now ask you
15 questions about your employment experience in the field
16 of DNA beginning in 1990 up to the present time, okay?

17 A. I began working with the Virginia Division of
18 Forensic Science. I was trained as a DNA analyst.

19 I then came to work for the Illinois State
20 Police in 1997 in their research and development
21 laboratory, and I took the position as the statewide DNA
22 technical leader three years ago.

23 Q. Dr. Llewellyn, can you give an approximation
24 in your career as to how many times you tested evidence

1 from crime scenes for the presence of DNA?

2 A. Hundreds of times.

3 Q. Dr. Llewellyn, are you familiar with --
4 strike that.

5 Have you been qualified as an expert in the
6 field of DNA as it relates to forensic science?

7 A. Yes, I have.

8 Q. Could you tell us approximately how many
9 times?

10 A. Approximately fifty times.

11 Q. And as part of your duties as working in the
12 field of DNA and forensic science from 1990 to the
13 present, are you familiar with what's called the CODIS
14 System, C-O-D-I-S?

15 A. Yes, I am.

16 Q. And what is that an acronym for?

17 A. It's the Combined DNA Index System.

18 Q. And can you explain to us as best you can
19 what that software system is?

20 A. CODIS is a software system that runs a
21 national DNA database. The database is made up of
22 different segments, made up of a national level, a state

23 level, and a local, or which would be your laboratory
24 level.

23

1 In these databases you have different
2 sections. For example, our state database or SDIS, we
3 have convicted felons that are put into that database.
4 We have casework for unsolved -- case profiles, for
5 unsolved and solved cases, as well as suspect profiles
6 that are in this database.

7 Our national consists of casework profiles
8 from unsolved and solved cases, as well as convicted
9 offenders.

10 And basically, what you would do if you got a
11 case and you had a profile, and there are certain
12 restrictions upon what you can enter, you would take
13 that profile and enter it into the computer software and
14 it would search it and determine if it matched or it hit

15 against any of these profiles that were in the database.

16 Q. Doctor, let me stop you there.

17 In your career since 1990, have you had
18 experience with both the entering of profiles -- or
19 strike that.

20 Do you have experience in actually the
21 extraction of DNA from pieces of evidence?

22 A. Yes.

23 Q. To be entered into the CODIS system?

24 A. Yes.

1 Q. Are you familiar with the information that
2 you can receive from the CODIS system both at the state
3 and federal level?

4 A. Yes.

5 Q. How many cases have you worked in your career

6 in which you have either dealt with the CODIS system on
7 the state or federal level?

8 A. I worked on hundreds of cases.

9 As for CODIS, I would say that I've entered
10 probably less than fifty.

11 Q. And are you familiar on a daily basis with
12 the supervision of the analysts here in Illinois from
13 1997 to 2004 and their entering of information from
14 samples to CODIS?

15 A. Yes.

16 MR. HOVEY: Now -- Judge, at this time I would
17 tender Dr. Barbara Llewellyn as an expert in the field
18 of DNA and forensic science, particularly as it relates
19 to the entry of DNA evidence in the CODIS system.

20 THE COURT: Mr. O'Reilly?

21 MR. O'REILLY: Just a few questions, if I
22 might?

23 THE COURT: Certainly.

24

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

CROSS EXAMINATION

BY

MR. O'REILLY:

Q. Miss Llewellyn, have you ever done an SDIS search yourself where you have actually entered it in?

A. No, I haven't.

Q. Now, a SDIS search, that is a state DNA index system, right?

A. Yes.

Q. And that's what we are talking about in this case, right?

A. Yes.

Q. But you have never done that yourself?

A. No.

Q. You never -- well, you know what the combined, you know what the convicted offender database is?

A. Yes.

Q. Have you ever entered an SDIS search for the convicted offenders yourself?

21 A. No. I have given the information to our
22 database person and he did it for me.

23 Q. Were you there watching when he did it?

24 A. No, I wasn't.

26

1 Q. Do you know what's on the screen when you saw
2 the screen come up?

3 A. No.

4 Q. Do you know what was on the printout when you
5 print out the screen? Have you seen those?

6 A. The printouts usually tell you if there was a
7 hit or not, what was entered.

8 Q. Okay.

9 Are you familiar with the full amount of
10 information that the analyst sees when they actually do
11 this on the screen?

12 A. No, I'm not. Just what's in the case files.

13 Q. Have you been trained in any statistical
14 procedures which will allow you to tell this Court how
15 many hits will come if we do a certain kind of search
16 request?

17 A. Yes, I have.

18 Q. Okay.

19 Are those validated? Are there any studies on
20 that that you're familiar with?

21 A. It's just a statistical method. That's it.

22 I mean, it's just an estimate of telling you
23 how frequently or rare or something.

24 Q. Did you use that -- is this what you are

1 talking about you used in this case?

2 A. Yes.

3 Q. Has that ever been tested where you make your

4 precision and then test to see if it's accurate?

5 A. No, not that I know of.

6 Q. Has anybody tested it to your knowledge?

7 A. To my knowledge, no.

8 MR. O'REILLY: Judge, we do not object to
9 qualifying this witness as a forensic DNA analyst.

10 My only caveat, Judge, what I heard Mr. Hovey
11 say at the end of his request concerned a specialty in
12 the database searching, which I don't think is
13 demonstrated by this witness.

14 THE COURT: State intend to use this witness
15 for that purpose?

16 MR. HOVEY: Yes, Judge.

17 I'd ask, Judge -- I'd like a chance at
18 re-direct, then.

19 THE COURT: Sure.

20

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

RE-DIRECT EXAMINATION

BY

MR. HOVEY:

Q. Dr. Llewellyn, are you familiar with the numbers, the statistical probability numbers that are generated from the state CODIS system in this state?

A. I know how many profiles are in, approximately how many profiles are in the database and an estimate of, you know, potential hits, like that.

Now, for population frequency, that would be a different estimate.

Q. Okay.

Do the people that work underneath you, it's their responsibility to determine the statistical probability of a DNA hit, for lack of a better word, correct?

A. It is their job to do the NDIS searches and determine if there is a hit.

19 Q. Once the hit is done, or once a hit is done,
20 who actually generates the numbers that we see on the
21 reports from the Illinois State Police regarding the
22 frequency of a DNA profile in the population?

23 A. The analysts do that.

24 Q. Are you familiar with that procedure?

29

1 A. Yes. That uses a different database.

2 Q. And have you done that yourself in your own
3 career?

4 A. Yes, I have.

5 Q. And you are you currently responsible for
6 some of those analysis and those ultimate numbers?

7 A. I'm responsible for the technical aspects of
8 the DNA analysis.

9 THE COURT: Any additional questions,
10 Mr. O'Reilly?

11

RE-CROSS EXAMINATION

12

BY

13

MR. O'REILLY:

14

Q. Just to be clear, you were talking about the

15

frequency generated for a probative match?

16

A. Correct.

17

Q. You're not talking about estimating how many

18

hits will come out when you enter a particular profile,

19

right?

20

A. That would be the same. You would take the

21

frequency from the population and determine how many

22

people are in the database and determine how probable,

23

how many probable hits you could have.

24

Q. Right.

1

A. It's just estimating.

2 Q. Yes.

3 In the context of using these calculations for
4 a DNA match in court -- you're with me there? That's
5 something you have testified to before?

6 A. Yes.

7 Q. But using it to predict how many hits will
8 come out, you've never testified to that before, right?

9 A. No, I have not.

10 Q. And your lab doesn't have any protocols about
11 that, do they?

12 A. No, they don't.

13 Q. When you testified to using these to say how
14 frequent or -- let me rephrase that.

15 When you use this in an ordinary case, you're
16 stating that with a degree of scientific confidence,
17 would that be accurate?

18 A. Yes.

19 Q. And in a case like this, could you be off by
20 a factor of ten?

21 MR. HOVEY: I'd object to the form of the
22 question.

23 What piece of evidence is he asking about?

24 MR. O'REILLY: I'll rephrase, your Honor.

1 When you -- Miss Llewellyn, you were telling
2 Mr. Hovey that you could estimate, or you would estimate
3 how many hits would come out when we enter a profile
4 into a database, right?

5 THE WITNESS: Yes.

6 Q. And could that estimate be off by a factor as
7 great as a factor of ten?

8 A. Whenever you do statistics, be it to estimate
9 how many hits, potential hits, or even the statistics in
10 a case like a probative match, there is a leeway there,
11 you know, probability of a factor of ten, either way,
12 that it could go. So it can be ten times more or ten
13 times less.

14 And that also goes for when you are, you know,
15 a suspect's standard card against an evidence standard,
16 too.

17 They're just estimates for how rare or how
18 frequent a profile may be.

19 Q. Let me simplify this.

20 If you were to say we entered in a four locus
21 match, I mean a four locus profile, and you said a
22 hundred hits will come up by estimate, right? Let's
23 work with that hypothetical. Could you be off by --
24 could it be like a thousand?

32

1 A. It's possible.

2 Q. Could it be like ten?

3 A. It's possible.

4 It's just an estimate.

5 Q. That's what you mean by a factor of ten?

6 A. It's an estimate.

7 Q. Now, can you tell this Court what information
8 comes up on these search screens when the analyst runs

9 the search?

10 A. Basically, the search is going to, if it
11 hits, it's going to give you information on the hit,
12 it's going to give you information on what you entered.
13 Or it's going tell you no, it didn't have any matches.

14 Q. Have you ever seen that yourself or --

15 A. All I have seen is the CODIS entry reports
16 and then if it hits.

17 MR. O'REILLY: Nothing further.

18 RE-DIRECT EXAMINATION

19 BY

20 MR. HOVEY:

21 Q. Dr. Llewellyn, the information that you have
22 received and that you, and that you use every day, is
23 that the same information that is shared with both the
24 prosecution and the defense in any case at either side's

1 request?

2 Let me rephrase that.

3 A. Thank you.

4 Q. When your analyst types the report and
5 indicates a statistical probability based on a
6 comparison between a piece of evidence and a DNA
7 profile, those reports, are they shared with both the
8 prosecution and the defense?

9 A. Yes.

10 Q. And in this case, Counsel asked you about
11 four loci, correct?

12 A. Correct.

13 Q. That was his question?

14 Obviously, that is referring to one set of
15 fingernails, correct?

16 A. Correct.

17 Q. Fine.

18 Of those four loci, how many are complete? Of
19 the four, how many are complete and how many are
20 incomplete?

21 A. Of that sample, there are two complete and
22 two incomplete.

23 Q. So you only have two complete loci on that

24 one set of fingernails, correct?

34

1 A. Correct.

2 MR. HOVEY: Judge, I have no further
3 questions.

4 I will once again tender Dr. Llewellyn as an
5 expert in the field of DNA as it relates to forensic
6 science which includes the statistical probability of
7 DNA profiles in the population at large.

8 THE COURT: Mr. O'Reilly?

9 MR. O'REILLY: As to that, regarding the
10 population at large, we have no objection, Judge,
11 regarding qualifying as a DNA expert with familiarity
12 with the population at large and the statistical tests
13 used to determine it.

14 THE COURT: I would so find the witness to be

15 an expert in the field indicated.

16 MR. HOVEY: May I proceed, Judge?

17 THE COURT: Please do.

18 MR. HOVEY: Dr. Llewellyn, directing your
19 attention to this specific case here, I want to direct
20 your attention to two pieces of evidence, Dr. Llewellyn.

21 One is Lab Exhibit 4 A 1 and the second is Lab
22 Exhibit 4 B 1.

23 Okay?

24 THE WITNESS: Yes.

35

1 Q. All right.

2 I want to ask you, Dr. Llewellyn, if your lab
3 conducted DNA analysis on 4 B -- 4 B 1?

4 A. Yes.

5 Q. Would you tell Judge Suria what specific kind
6 of evidence was 4 B 1?

7 A. 4 B 1 was swabbings from fingernail clippings
8 from the left hand of Angela Jones.

9 And basically what this is is clippings were
10 taken from all five of her nails on her left hand. The
11 analyst took a cotton swab and actually swabbed the
12 inside of those nails and extracted it for DNA.

13 Q. Was your lab able to develop an incomplete
14 profile of 4 B 1?

15 A. When we test evidence, especially evidence
16 from a victim, from their body, we're looking for
17 something different from the victim.

18 And the only thing on these fingernail
19 clippings that was different from her was a profile, was
20 a DNA profile that only indicated it was male. No other
21 information was obtained from that sample.

22 Q. When you say, "no other information," let me
23 ask the question this way.

24 How many points of information, or as you

1 refer to them loci, correct? L-o-c-i?

2 A. Yes.

3 Q. How many loci do you need in order to make a
4 match with, in your opinion, scientifically valid
5 statistics?

6 A. What we do is, with our testing, we want to
7 test for thirteen different locations on the DNA.

8 If you think about DNA as a piece of chain,
9 and each link is a different location on the DNA. So we
10 want to look at thirteen different links, as well as
11 this, it's called amlogemin, and it's, it tests for male
12 -- it tests for sex. So it's going to tell me if it's a
13 male or female.

14 So the more loci you have, the more
15 scientifically certainty you have, the higher your
16 probability is that it is a match.

17 Q. With respect to Exhibit 4 B 1, did you have
18 any complete links or loci with respect to that DNA
19 profile?

20 A. The only thing, again, the only thing we
21 found in that case was a male-type amlogemin location on

22 the DNA.

23 Q. Nothing else of the thirteen?

24 A. Correct.

37

1 Q. All right.

2 What was the next piece of evidence that your
3 laboratory personnel looked at from this case?

4 A. Swabbings from the right hand fingernail
5 clippings from Angela Jones.

6 Q. And what exhibit number was that, please?

7 A. That was Exhibit 4 A 1.

8 Q. And was your lab able to determine an
9 incomplete DNA profile on 4 A 1?

10 A. Yes.

11 Q. How many loci or links in the chain was your
12 lab able to find in that exhibit?

13 A. Four locations, or four loci on the DNA, plus
14 the amlogemin, a-m-e-l-o-g-e-n-i-n.

15 Q. So of the thirteen on that exhibit, you had
16 four, correct?

17 A. Correct.

18 Q. Two of which were incomplete?

19 A. Correct.

20 Q. And two of which were complete?

21 A. Correct.

22 Q. All right.

23 And would these loci or locations be analogous
24 for purposes of illustration to fingerprint comparison?

1 A. Yes, you can make an analogy of that.

2 Q. So if that's what we were talking about here,
3 you would have four points, two complete, two
4 incomplete, correct?

5 A. Correct.

6 Q. Now, Dr. Llewellyn, you have had an
7 opportunity to meet with both sides in this case, is
8 that correct?

9 A. Yes, it is.

10 Q. And, Dr. Llewellyn, have you had a chance to
11 review the request that the defendant in this case is
12 making?

13 A. Yes.

14 Q. And you have reviewed that with respect to
15 both 4 B 1 and 4 A 1, correct? Both sets of
16 fingernails?

17 A. Yes.

18 Q. Dr. Llewellyn, can you indicate for us the
19 concerns that the Illinois State -- that the crime lab
20 has with respect to searching the DNA profile of 4 B
21 which only indicates a male?

22 MR. O'REILLY: Judge, I'm sorry. I just
23 noticed there might be another witness in the courtroom
24 --

1 THE COURT: Certainly.

2 MR. O'REILLY: -- who was present at some of
3 the meetings. And I just noticed it now.

4 I don't know if Mr. Hovey is aware, but I
5 think Mr. O'Connor who is present at the meetings is in
6 the courtroom, and he can be a potential witness.

7 THE COURT: Do you intend to call
8 Mr. O'Connor?

9 MR. HOVEY: I do not intent to call him. I
10 believe he was present at some of the meetings.

11 Let me check.

12 THE COURT: Does the Defense intend to call
13 him?

14 MR. O'REILLY: I believe there is that
15 possibility.

16 And rather than raise that later, I just want
17 to -- Mr. Hovey was up front with us. I want to be up
18 front with him and say my understanding is he might be.
19 And if we do call him, I want to abide by your ruling,

20 Judge.

21 MR. HOVEY: Okay, Judge. I'll take care of
22 it.

23 I don't believe he's going to be a witness --
24 well, you know --

40

1 THE COURT: The Defense indicates they might
2 call him.

3 MR. HOVEY: Oh, okay. Fine.

4 THE COURT: I'll ask Mr. O'Connor if you would
5 kindly step outside, or step in the back.

6 MR. HOVEY: Judge, can I have my question read
7 back for me?

8 THE COURT: Certainly.

9 (Whereupon the court reporter
10 read back as requested, after

3 respect to 4 A 1 which is two complete and two
4 incomplete profiles of four loci or links in the chain?

5 A. Basically our state procedures have us only
6 enter profiles into our state database that have six
7 complete locations on the DNA.

8 What we mean by "complete" is you inherit half
9 your DNA from your mom and half your DNA from your dad.
10 So you get one type from your mom and one type from your
11 dad. So those types are what we call alleles.

12 And in this case, I have two locations on the
13 DNA where I have two alleles at those locations, so that
14 would be --

15 Q. That would be a complete profile only at
16 those two?

17 A. Exactly.

18 At the other locations I only have one allele.
19 I don't have that other one. And so those are
20 incomplete.

21 So that's what is meant by two complete and
22 two incomplete.

23 But by such a small profile, and by my
24 estimates this profile would be so frequent in the

1 population as 1 in 45 to 1 in 147. So the potential to
2 include people, there is a large potential to include
3 people there.

4 The problem is, it's going to be once you
5 include them, it's going to be difficult to exclude
6 them. So you could end up with a potential hit that you
7 cannot exclude people from.

8 And in this case, the defendant was excluded.

9 Q. Dr. Llewellyn, as I understand it, as you
10 just indicated then, despite -- the defendant in this
11 case was excluded from that particular exhibit, and that
12 would be 4 A 1, correct?

13 A. Yes.

14 Q. And with respect to 4 B 1, he being a male is
15 included like every other male that would be in the
16 CODIS system, correct?

17 A. Correct.

18 Q. Dr. Llewellyn, in your opinion, would the
19 search of the four loci, two complete and two
20 incomplete, yield any scientifically probative results?

21 A. No, because you could never exclude these
22 people that it hit upon.

23 Q. And you estimate -- and this is just an
24 estimate that you are testifying from, correct?

43

1 A. Correct.

2 Q. Your estimation is that that incomplete
3 profile would appear anywhere in our population from 1
4 in 45 to 1 in 147 people, correct?

5 A. Correct.

6 Q. Dr. Llewellyn, you've indicated that the
7 policy of the State Police crime lab is to have six
8 complete loci for a search, correct?

9 A. Yes.

10 Q. And that is because of the statistical
11 probability that those searches can possibly yield,
12 correct?

13 A. Yes.

14 Q. And those can be anywhere, you have seen
15 those to be in the millions, correct?

16 A. The reason we want six is so that the hits
17 that, the potential hits that you get are more
18 informative, that you're less likely to include somebody
19 falsely just because they have those types at four
20 locations.

21 Q. And as you go higher, as you have more
22 complete loci, then you can do higher statistical
23 probabilities?

24 A. You tend to eliminate more people as the more

1 locations on those DNA, the more likely you are able to
2 exclude somebody.

3 Q. Because, Dr. Llewellyn, the benefit of DNA,
4 the ultimate benefit is for an analyst to come to court,
5 correct? To just be able to come to court with an
6 opinion, correct?

7 A. The benefit of DNA?

8 Q. Right.

9 A. Allows for the exclusion of people.

10 Q. Right.

11 And the more loci we have, the better the
12 exclusion can be, correct?

13 A. Correct.

14 Q. And the testimony of an expert is that to a
15 reasonable degree of medical certainty, he or she would
16 expect to find this DNA profile once out of so many
17 people in the population, correct?

18 A. Correct.

19 Q. And when you can say that in the billions,
20 then you've narrowed down considerably, if not
21 completely, the number of people who could be associated
22 with that profile, correct?

23 A. Correct.

24

Q. In this case, the best numbers we can hope

45

1 for is 1 in 45 up to 1 in 147, correct?

2 A. Correct.

3 Q. Dr. Llewellyn, what is the concern that the
4 State Police crime lab has with respect to entering the
5 victim's profile in the CODIS system?

6 A. This is a mixed DNA profile. You would
7 expect to find the victim's type underneath her
8 fingernails.

9 We are -- through our policies and procedures,
10 we're able to pull her out, tweeze her out of this
11 mixture and come up with what is probative with this
12 mixture of DNA types. And by allowing her profile to be
13 searched increases the number of uninformative hits or
14 database hits.

15 So the most scientifically sound method is to

16 tweeze out or take out what you know belongs to her and
17 only search what's foreign to her, which would be those
18 four loci.

19 Q. And that is because, Dr. Llewellyn, these are
20 to the best of all our knowledge the fingernails of
21 Angela Jones?

22 A. Correct.

23 Q. And Angela Jones is the victim in this case?

24 A. Yes.

46

1 Q. So whether portions of Angela Jones' DNA
2 would hit to some other case is not probative, is it?

3 A. Correct.

4 MR. HOVEY: Judge, I have no further questions
5 of Dr. Llewellyn.

6 Thank you.

7 THE COURT: Is there a national standard
8 determining how many loci are necessary to have a valid
9 --

10 THE WITNESS: Yes. The national DNA index
11 requires that you have ten -- you have to attempt all
12 those thirteen locations, but you have to have ten
13 complete, a DNA profile of ten to even be able to enter
14 it nationally.

15 THE COURT: And does the state require the
16 same?

17 THE WITNESS: The state only requires six.
18 They requires you to attempt all of them, but you can do
19 only, only put six in, if that's all you've got.

20 THE COURT: Mr. O'Reilly?

21 MR. O'REILLY: Thank you, your Honor.

22

23

24

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

CROSS EXAMINATION

BY

MR. O'REILLY:

Q. You have talked about a lot of databases.
Maybe you can help me clarify a few of them.

First, there is a local database, is that
correct?

A. That is correct.

Q. Is that LDIS?

A. LDIS.

Q. That would be this local lab on Roosevelt
Road?

A. Yes.

Q. For LDIS, you have a number you search,
correct? A number of loci where you'll do a search?

A. That's correct.

Q. Is that four?

A. That is three complete.

Q. Three?

A. Complete.

Q. Okay.

22 Now, you also mentioned your state requirement
23 of six?

24 A. Yes.

48

1 Q. Used to be three, right?

2 A. At state?

3 Q. At state, yes.

4 A. I honestly don't recall that.

5 Q. Now, you are familiar with this case from a
6 series of meetings, right?

7 A. Yes.

8 Q. You have talked to me?

9 A. Yes.

10 Q. And Miss Herigodt?

11 A. Yes.

12 Q. And you talked to the prosecutors, the
13 attorney general, correct?

14 A. Yes.

15 Q. And other people in your lab?

16 A. Yes.

17 Q. And you looked over some paperwork?

18 A. Yes.

19 Q. Are you familiar in this very case this judge
20 ordered a DNA search for a vaginal swab? Are you
21 familiar with that?

22 A. Yes, I am.

23 Q. And you are familiar the order was including
24 any possible matches of three loci or more? I believe

49

1 you had that in your paperwork this morning?

2 A. Yes.

3 Q. And that was a state search of three loci or
4 more?

5 A. Actually, this search was more than three
6 loci. But the caveat was that in order to to report a
7 hit, it had to hit at three of those locations.

8 So they were searching more than three
9 locations, but to report the hit, it had to hit at three
10 of those locations.

11 Q. So you are familiar that this order said,
12 including any possible matches of three loci. Are you
13 familiar with that language?

14 A. Yes.

15 Q. Now, you know who Karen Kucharic (phonetic)
16 is?

17 A. Yes.

18 Q. Is she the state coordinator?

19 A. Yes.

20 Q. And so she was the person then that undertook
21 this DNA database search, right?

22 A. Yes.

23 Q. So when she was searching at, including any
24 possible matches of three loci or more, per policy then

1 was to continue that search, right?

2 In other words -- let me rephrase that.

3 You do the search once, like on Tuesday,
4 right?

5 A. Right.

6 Q. At some period of time the policy is you come
7 back and redo the search, right?

8 A. Yes.

9 Q. That was done in this case, right?

10 A. Yes.

11 Q. In fact, she said she would continuously
12 search this vaginal swab excluding any possible matches
13 of three or four loci?

14 A. Yes.

15 Again, searching nine loci, but looking for if
16 it hits at three.

17 Q. At three or more?

18 A. Correct. At least three.

19 Q. This order was in 2001?

20 A. Correct.

21 Q. That was in this case, right?

22 A. Yes.

23 Q. And you told the Judge that the local
24 database is a four locus requirement, right?

51

1 A. Three complete loci.

2 Q. Okay.

3 Now, let's talk about requirements.

4 Do you have things called protocols?

5 A. Yes.

6 Q. Protocols are like the cookbook for the lab,
7 right?

8 A. Yes.

9 Q. In fact, in your role as a supervisor you
10 oversee how people are fulfilling their requirement to
11 fulfill the protocols, right?

12 A. Yes.

13 Q. But they can ask for waivers from those
14 protocols?

15 A. Yes.

16 Q. In your STR interpretation guidelines, they
17 ask you for waivers, is that right?

18 A. Yes.

19 Q. So somebody will send you something and say,
20 "Hey, in this case it's not appropriate to follow this
21 protocol," is that correct?

22 A. Yes.

23 Q. And they have to document that when they send
24 that to you, right?

1 A. Yes.

2 Q. That there's a good reason for not following

3 the policy or the procedure or the protocol, or whatever
4 you guys call it?

5 A. Yes.

6 Q. And if there is a good reason, then you're
7 the person that signs off on not following the protocol,
8 right?

9 A. Right.

10 Q. And that must happen, right?

11 A. Yes, it does happen.

12 Q. Occasionally? When there is a good reason?

13 A. When there is a good reason.

14 Q. And usually that good reason is to forward a
15 law enforcement investigation or prosecution, is that
16 correct?

17 A. No, it's for the best interest of the case,
18 or what makes sense in interpretation.

19 Q. Okay.

20 Well, let's talk about the best interest of
21 the case.

22 You were talking with Mr. Hovey about this
23 notion of what judges and lawyers usually see in a case,
24 and that is you tell the jury that the chance that this

1 match would occur in the population at large would be
2 like 1 in a billion. That's usually what happens, and
3 that's powerful evidence, right?

4 A. Yes.

5 Q. What do we call that? For the sake of today,
6 I want to find a term for what you are talking about.

7 That's like the power of a DNA match. Is that
8 a fair way of characterizing this talk?

9 A. I think that sounds fair.

10 Q. Okay.

11 So we're talking about, you can use statistics
12 to show the power of the DNA match, right?

13 A. When they're there, yes.

14 Q. So that's like in a case you'd stand up and
15 say, for instance, Mr. Griffin, the chances of a random
16 person matching the DNA would be like 1 in a billion.
17 That happens in cases commonly, right?

18 A. Yes.

19 Q. And in some cases, that's the appropriate
20 thing.

21 We'd agree on that?

22 A. Yes.

23 Q. But let's talk about CODIS and DNA index
24 searches.

54

1 You don't use a CODIS or DNA index search to
2 stand up and point the finger and say, "That's the man,
3 it's a match," right?

4 A. That's correct.

5 Q. You do not, correct?

6 A. Correct.

7 Q. You use it as a lead in an investigatory or
8 investigative lead, but a lead for investigation, do we
9 agree?

10 A. Yes.

11 Q. It's different than when you're pointing the
12 finger at somebody and say he matches that sample, yes?

13 A. Yes.

14 Q. Isn't it true that you know that the Defense
15 is asking for an investigative lead in this case,
16 correct?

17 A. That's correct.

18 Q. And in fact, we even discussed that, you and
19 I?

20 A. Yes.

21 Q. At a prior occasion?

22 A. Yes.

23 Q. So we're not talking about like a probative
24 match for whoever it is that's in that profile,

1 understand that?

2 A. Yes.

3 Q. Okay.

4 Now, I'd like to direct your attention in this
5 case to one item of evidence, not two, and discuss it
6 with you briefly. It's the right fingernails. Okay?

7 Did you familiarize yourself with the right
8 fingernails that were tested by your lab in this case?

9 A. I'm familiar with the report.

10 Q. Okay.

11 You didn't do those yourself? You didn't do
12 the analysis?

13 A. No.

14 Q. Although you have previously conducted
15 analysis?

16 A. Yes.

17 Q. All I want to point out -- I know you talked
18 about other exhibits with the Prosecutor. I just want
19 to focus on the right fingernail scrapings.

20 MR. MALONEY: For the record, it's 4 A 1.

21 MR. O'REILLY: Thank you.

22 Let's focus on that.

23 Now, there was another confusion here, and I,
24 I'll try to be clear.

1 You talked about this state index and the
2 federal index and SDIS. I'm talking about what's
3 called, what we lawyers call the convicted offender
4 database. Is that a fair way --

5 A. That's one of the indices that are contained
6 in the state database or SDIS.

7 Q. Okay.

8 Now, I know you talked about all those other
9 databases with the Prosecutor. But I'm just talking
10 about the convicted offender database, is the way you
11 phrase it, okay?

12 Now, the convicted offender database for the
13 State of Illinois is what I'm talking about, and that's
14 smaller than this whole SDIS database?

15 A. Yes.

16 Q. It doesn't have the suspect samples in there,
17 right?

18 A. Right.

19 Q. It doesn't have the forensic unknowns in
20 there?

21 A. Correct.

22 Q. And it's a lot smaller than, for instance,
23 CODIS or the federal system?

24 A. Correct.

57

1 Q. All we are talking about are felons in
2 Illinois?

3 A. Correct.

4 Q. Must have been convicted?

5 A. Yes.

6 Q. At least for now.

7 Now, in this case, when we are talking about

8 the right fingernail, I think you said a male profile
9 was found, right?

10 A. In 4 A 1?

11 Q. Well, the victim was a female?

12 A. Yes. The foreign profile was male.

13 Q. 4 A 1?

14 A. Right.

15 Q. So I'm going to try to refer to it just as
16 right fingernails and not get confused.

17 A. That's fine.

18 Q. So the right fingernail was tested at your
19 lab, yes?

20 A. Yes.

21 Q. And that got a mixed profile from that,
22 correct?

23 A. Yes.

24 Q. And one of those profiles was of a male,

1 correct?

2 A. Yes.

3 Q. And one was from a male that was not Geoffrey
4 Griffin, correct?

5 A. That's correct.

6 Q. Now, again, we're talking about, we agreed a
7 minute ago we were talking about investigative leads,
8 right?

9 A. Yes.

10 Q. I want to come back to that.

11 Just as a forensic scientist, you were talking
12 about all your experience, fifty cases you have
13 testified.

14 That's important information, is it not?

15 MR. MALONEY: Objection to the form of the
16 question. The testimony or --

17 THE WITNESS: I'm not sure what you mean. I'm
18 sorry.

19 MR. O'REILLY: Ma'am, would it be important in
20 this case where the fingernails of a victim who died a
21 violent death struggling maybe with her attacker, and
22 you find a male profile. You're in the lab. You're

23 looking for your thought process. You find a male
24 profile under the victim's fingernails.

59

1 That would be significant, yes?

2 A. In this case the frequency is such that it's
3 so low that you are going, it's going to be hard to
4 exclude people.

5 Q. Well, I'm asking you as you're sitting at the
6 bench, working the case, you'd say, you expect to find
7 the victim, right? That would be a female profile, yes?

8 A. Yes.

9 Q. And now you found a male profile. That would
10 seem to be important information, yes?

11 A. It's definitely information for the case,
12 yes.

13 Q. Okay.

14 Well, if it matched Geoffrey Griffin, you'd
15 sure think that's important, right?

16 MR. HOVEY: Objection, Judge. We all know it
17 doesn't. With respect to 4 A 1 and 4 B 1, that is an
18 unfair question, because we know that one of them is
19 excluded.

20 And on the other exhibit, 4 B 1, it does match
21 Geoffrey Griffin, as it matches every male in CODIS.

22 THE COURT: I'll let Counsel continue.

23 MR. O'REILLY: Ma'am, can I -- I don't know if
24 I can bother reading it back. I'll go back and see if

60

1 we can get back to where we were.

2 Again, the right fingernail, we were talking
3 about the right fingernail. I'm not confusing it with
4 the left, or the victim.

5 I might have mis-spoken. But we are still on

6 the right fingernail.

7 So the victim's right fingernails are
8 analyzed, and you know the victim is a female?

9 A. Yes.

10 Q. And you find a male profile, yes?

11 A. Yes.

12 Q. And if that male profile matches the suspect
13 Geoffrey Griffin, that would be significant information,
14 right?

15 A. It would link him to the victim, yes.

16 Q. Okay.

17 Now, if it matches somebody else, that could
18 be significant, too, correct?

19 A. That's possible, yes.

20 Q. Well, if it hit on, for instance, somebody
21 who's committed a sex crime in the neighborhood, would
22 that be important?

23 A. There again, the frequency is so low, I can't
24 -- the frequency would be 1 in 45. It could hit on

1 other people.

2 Q. It could.

3 But I'm asking this question. If the DNA that
4 doesn't match Geoffrey Griffin matched a convicted
5 offender in the neighborhood, a sex offender, would that
6 be important?

7 MR. MALONEY: Objection to would it match,
8 Judge.

9 MR. O'REILLY: Hit.

10 THE COURT: In this case --

11 MR. O'REILLY: Could it be hit on -- let me go
12 back.

13 If you submit the profile, could you get
14 candidate matches?

15 THE WITNESS: It's possible, yes.

16 Q. Could those candidate matches match somebody
17 convicted of a sex offense?

18 A. It would match people convicted and are
19 contained in the database.

20 Q. We're just talking about the convicted

21 database, right?

22 A. Right.

23 Q. So if we did submit this profile, you can't
24 exclude the possibility that it will match somebody, a

62

1 candidate match you call it, in that convicted offender
2 database, correct?

3 MR. MALONEY: Objection. Just for the record,
4 a standing objection to the word "match," unless he's
5 going to ask her what "match" means, or the definition
6 of that is.

7 THE COURT: I'll let you inquire on re-direct.

8 MR. O'REILLY: Can you ask it again?

9 (Whereupon the court reporter
10 read back as requested, after
11 which the following proceed-

4 such that the potential for it to hit is there, and
5 you're not going to be able to exclude anybody.

6 Q. Well, we're not going to be able to exclude
7 anybody.

8 Do you know -- can you say to a scientific
9 certainty how many hits we'll get?

10 A. All I can give is an estimate.

11 Q. But it could be ten, right?

12 A. It's possible.

13 Q. So if we get ten hits when we submit this
14 profile, those are convicted offender hits, yes?

15 A. Yes.

16 Q. And when those pop up on the screen, you can
17 eliminate those erroneous hits, the one you are talking
18 about, right? You don't have to spend a week doing
19 that; you can eliminate that on the screen. It pops
20 right up in front of the analyst, right?

21 A. You have -- to eliminate them you have to
22 take the case file and sit down with them, yes.

23 Q. Oh. It's your testimony here today that you
24 need to go through the case file --

1 A. You have to have the --

2 Q. -- when you're --

3 A. You have to have what the analyst called to
4 be able --

5 Q. Well, but that's on the screen in a convicted
6 offender search. I'm not talking about an unsolved
7 case.

8 A. You still have to compare it to what you put
9 in, yes.

10 And, yes, it would be on the screen.

11 Q. So we're talking about a computer screen.
12 The analyst sits at the screen and is watching. And if
13 we get ten candidate matches, they can look right on the
14 screen and exclude the erroneous ones just by looking on
15 the computer screen for candidate matches in a CODIS, in
16 a convicted offender search?

17 A. This would only be if you only entered what
18 was foreign to her.

19 If the victim was also entered, you'd have to
20 tweeze out what was probative and what was not.

21 Q. Well, let's go back to a meeting you had with
22 Don Parker who did the analysis.

23 You know Mr. Parker?

24 A. Yes.

65

1 Q. He did the 4 A, I think, the fingernails on
2 the right hand, he did the analysis?

3 A. Yes.

4 Q. Did he come up with a profile that could be
5 submitted?

6 A. Yes.

7 Q. And was it a four locus profile?

8 A. That's the four locus with two complete and
9 two incomplete.

10 Q. So in fact, you had a meeting, and the
11 analyst who really did the work on the case came up with
12 a four locus profile from the right hand, is that
13 correct?

14 A. Right.

15 Q. And if that was to be entered into the
16 convicted offender database, it's possible that we would
17 get some investigative leads in this case, right?

18 A. It's possible you could definitely get some
19 hits.

20 Q. Well, I read your affidavit, and you said
21 that there's like no probative information for
22 inclusionary purposes.

23 Do you remember that phrase, "inclusionary
24 purposes"?

1 A. Because I can't exclude people. You're going

2 to have the potential for, you know, ten to a thousand
3 hits.

4 Q. But my question is, do you remember your
5 affidavit was talking about no probative value for
6 inclusionary purposes, yes? Did you write such a phrase
7 in your affidavit?

8 MR. MALONEY: Objection. She is trying to
9 explain what that means. That is what she is trying to
10 do.

11 THE COURT: I'll let him continue.

12 THE WITNESS: Basically for the scientist --

13 MR. O'REILLY: Was that the phrase? I just
14 want to make --

15 A. I'd have to look. I'm sorry.

16 Q. Because I'd like to get to the actual phrase,
17 and we can refresh your recollection for that we can.

18 MR. HOVEY: Judge, then I'd ask that Counsel
19 show Dr. Llewellyn the affidavit.

20 MR. O'REILLY: That's what I'm going to do,
21 Judge. These terms are getting pretty confusing. I
22 want to keep it as clear as we can.

23 May I approach, your Honor?

24 THE COURT: Certainly.

1 MR. O'REILLY: Ma'am, I'm going to show you --
2 I'll mark it Petitioner's, just for the purpose of
3 identification, Petitioner's 1.

4 I'm going to hand it to you. Could you let us
5 know if you know what that is?

6 And tell the Judge what it is.

7 Does that contain your affidavit?

8 A. Yes, it does.

9 Q. Now, when I say, "contain your affidavit,"
10 you filed an affidavit in connection with this case to
11 support a brief filed by the Attorney General, just so
12 we're all on the same page, right?

13 A. Yes.

14 Q. And when you filed that -- I'm sorry.

15 When you had that satisfied, you used some
16 language. That language was your own, was it not? I

17 mean, they were your words, right?

18 A. Yes.

19 Q. Okay.

20 Now, there is a phrase you used in that
21 affidavit I want to direct your attention to, because it
22 occurs a couple of times, and I'd like to figure out
23 what it means.

24 You said you were -- I think you might have

68

1 used it with Mr. Hovey, but you might have used a
2 different phrase.

3 You said that it wouldn't be probative or
4 wouldn't be material or relevant, or something like
5 that, for inclusionary purposes.

6 Do you recall that phrase?

7 If it helps refresh your recollection, I can

8 give you the paragraph, if you need it.

9 THE COURT: It would save time if you would.

10 MR. O'REILLY: Is it C, ma'am?

11 THE WITNESS: C says for inclusionary purposes
12 a search of this limited profile would result in no
13 relevant probative information for this case.

14 And the idea behind that --

15 Q. I want to just make the record clear.

16 That refreshes your recollection, reading
17 that?

18 A. Yes.

19 Q. Yeah.

20 And did you refer to that on Page 3 of your
21 affidavit, Section C? Is that what you're referring to?

22 A. Yes.

23 Q. Okay.

24 So it was your affidavit Page 3, Section C?

1 A. Yes.

2 Q. Now, my question is did you use that phrase,
3 "inclusionary purposes"?

4 A. Yes.

5 Q. Now, I wanted to ask you about that phrase.

6 Inclusionary purposes means -- is that like
7 what we were talking about earlier, like the power of
8 the match, when you stand up and say, "That's the man
9 and the chances are a billion to 1?"

10 A. That's correct. Because in this instance --

11 MR. HOVEY: Judge, I'd object.

12 I'll withdraw that.

13 THE WITNESS: In this instance we are saying
14 this profile frequency in the population could be from 1
15 in 45 people to 1 in 147. So the relevance, the
16 scientific relevance of that is, it's sort of a, it's a
17 frequent profile in the population.

18 MR. O'REILLY: Right.

19 So if you are using that to convict a guy,
20 well --

21 A. The numbers are small.

22 Q. Right. There's a lot of people if you are

23 using it to convict a guy?

24 MR. MALONEY: Objection to the form of the

70

1 question, Judge.

2 THE COURT: Sustained.

3 MR. O'REILLY: But the power of the match is
4 not so great, right?

5 THE WITNESS: The power of this, the profile
6 at this, these four loci is not powerful.

7 Q. Right.

8 Now, that's inclusionary purposes, right?
9 That's the first kind of thing we were talking about, am
10 I correct?

11 A. That is what I am concerned with, yes.

12 Q. Now, let's walk over to the other side of the
13 room.

14 Again, we made an agreement earlier. We said

15 we'd talk about, you know, that inclusionary purpose
16 stuff. But then there was this investigative lead
17 stuff. You know that that's what we were talking about,
18 the Defense, right? You know that we're not asking for
19 an inclusionary purpose in this search, right? You
20 agree with that?

21 A. That's what you have stated, yes.

22 Q. You know we're looking for an investigative
23 lead, is that correct?

24 A. Yes.

71

1 Q. Okay.

2 Not -- we are not looking for inclusionary
3 purposes. We're looking to see if we can find a lead to
4 convict a defendant. Do you understand that?

5 A. Yes, I do.

6 Q. Okay.

7 At some point in this case you were brought in
8 after Don Parker had already come up with the profile?

9 A. Yes.

10 Q. And was that after the Defense had asked to
11 do the search?

12 A. I was brought in in January of this year, so,
13 yes, I think that is true.

14 Q. When you were brought in, did you have, you
15 had some meetings, yes?

16 A. Yes.

17 Q. And one of those meetings was Mr. Parker who
18 did the analysis present?

19 A. I never met with Don.

20 Q. Well, you're familiar with his -- earlier you
21 said you were familiar that he suggested a four locus
22 profile for searches?

23 A. Right. That's in his notes, yes.

24 Q. Now -- by the way, I just want to clarify

1 some terms. We've used them pretty loosely and I'm
2 sorry for not defining them clearly.

3 You said to Mr. Hovey, well, like DNA, well,
4 that's like the, you know, they call it the blueprint of
5 life?

6 A. Yes.

7 Q. It's genetic material in us?

8 A. Yes.

9 Q. It differs from one individual to another,
10 right?

11 A. Correct.

12 Q. Unless they're identical twins, right?

13 A. Yes.

14 Q. And there's like billions of bases on our
15 geno, each person?

16 A. Correct.

17 Q. All right.

18 But in forensic analysis generally, you look
19 at thirteen locations of those (inaudible), right?

20 A. Right.

21 Q. Now, each of those locations, those thirteen,
22 you call, that's what we call, or you call, that's a
23 locus, right?

24 A. Each location is a locus.

73

1 Q. And a locus is the same as location. It's
2 like Latin for it, right? And when you said loci, that
3 just means more than one locus?

4 A. It's plural.

5 Q. So it would be like you had thirteen chairs,
6 right?

7 A. Yes.

8 Q. And each chair would be a location or locus,
9 yes?

10 A. Yes.

11 Q. Okay.

12 But then there's an extra one. You said

13 that's an amlogemin?

14 A. Amlogemin.

15 Q. And that's the difference between boys and
16 girls?

17 A. Right.

18 Q. So girls are like XX?

19 A. Yes.

20 Q. And boys are XY?

21 A. Yes.

22 Q. And in this case under the right fingernail
23 you saw a Y, correct?

24 A. Yes.

1 Q. Now, you were talking to Mr. Hovey about all
2 these locations.

3 Well, you run two kits. One is called

4 Profiler?

5 A. Profiler Plus.

6 Q. That just looks at nine locations, right?

7 A. Yes.

8 Q. And in fact, for the years you were doing
9 case work you were using Profiler, right?

10 A. No, I have always used Profiler Plus.

11 Q. Okay.

12 When did you start?

13 A. 1997.

14 Q. All right.

15 At some point they were using Profiler. Then
16 they added Cofiler, right?

17 A. Yes.

18 Q. Profiler gives you nine?

19 A. I have -- there's a kit called Profiler,
20 there's Profiler Plus and there's Cofiler.

21 Q. For this case let's just use Profiler Plus,
22 okay?

23 A. Okay.

24 Q. So excuse me if I don't put the plus in

1 there.

2 Now, this, these nine locations, this is a --
3 you used another phrase. At each of these nine
4 locations in the Profiler Plus kit or the thirteen
5 locations in the full kit, okay?

6 A. Yes.

7 Q. That's where the alleles go, right? Alleles
8 fall into a certain locus?

9 A. Yes. Each location has its own alleles.

10 Q. So let's talk about normal.

11 Mr. Hovey was talking about mom and dad
12 contributing alleles to a person. Well, I want to try
13 to clarify that, okay?

14 If this chair is a location, right? Then
15 usually you expect to see one allele from the mom and
16 one allele from dad sitting in that chair, yes?

17 A. If it's a single source stain, yes.

18 Q. Okay.

19 So usually, if I'm looking over here to single
20 source stain and I see two alleles at this location, two
21 peaks is what you see on your little charts, that is
22 usually one contributor, right?

23 A. You would look at the whole profile. But
24 yes, basically.

76

1 Q. Generally speaking.

2 But sometimes people are what you call
3 homozygous?

4 A. Correct.

5 Q. Could you spell that?

6 A. H-o-m-o-z-y-g-o-u-s.

7 Q. Now, homozygous means only they're showing
8 one allele there?

9 A. Right. Basically, you inherited the same
10 type from your mom and the same type from your dad, so

11 you only have one type that shows up. But you actually
12 got two. There are two alleles, but they're the exact
13 same type.

14 Q. So in this chair, ma'am, you are saying this
15 is just one location -- let's start with just one
16 location.

17 Usually you expect to see two alleles there?

18 A. Yes.

19 Q. And you'll say well, then that's probably one
20 person, one from mom, one from dad, right?

21 A. Right.

22 Q. But sometimes that is not the case, right?
23 Sometimes it's, you only see one allele type there, is
24 that correct?

1 A. Right.

2 Q. And that's because they got the same exact
3 type; one from mom and one from dad, right?

4 A. Right.

5 Q. But they were the same ones?

6 A. Right.

7 Q. The same type?

8 A. But they'll be there in such a proportion
9 that it's twice as much than would be seen with just
10 one.

11 Q. So it would be -- and you call that a
12 homozygout, right?

13 A. Right.

14 Q. Again, you talked about forensic unknowns. I
15 want to be clear about this.

16 In the database you talked about forensic
17 unknowns, and in direct you were talking about this,
18 too.

19 Forensic unknowns, -- well, if those are in
20 DNA, if you did a state DNA index search -- are you with
21 me here?

22 A. Yes.

23 Q. And you came up with a hit, right?

24 A. Yes.

1 Q. Then you'd have to like pull the file from
2 that forensic unknowns case, wouldn't you?

3 A. Yes.

4 Q. And that's a lot of work, yes?

5 A. Yes, it is.

6 Q. Okay.

7 Now, let's step back.

8 We're not talking in this case, we agree,
9 about the forensic unknown database, is that correct?

10 A. You're talking about --

11 Q. Convicted offender database.

12 A. Which is a subset of the SDIS.

13 Q. And that doesn't require going to pull the
14 file, correct?

15 A. Correct.

16 Q. Now, when we met I think a month or two ago,

17 we discussed this policy, and I would say that the
18 policy is that although, although we have this four
19 locus profile, the policy is that you -- I'm sorry --
20 the current state policy as you articulated it was that
21 the policy is, "We won't search this profile," right?
22 Is that a fair statement of what the current policy is?

23 A. The policy is you have to have six complete
24 locations.

79

1 Q. Okay.

2 And I asked you if -- and actually, I think at
3 that meeting we discussed -- and correct me if I'm wrong
4 -- that the Defense was looking for an investigative
5 lead, right?

6 A. That's what you said, yes.

7 Q. And we're looking for, to see if a convicted
8 offender matches the DNA under the right fingernails,

9 yes?

10 A. Yes.

11 Q. And then I asked you if the, if you agreed,
12 if you agreed with the policy, because if we use the
13 policy, Mr. Griffin doesn't get to see if that right
14 fingernail male profile matches some other offender.
15 And I asked you, "Do you agree with that policy"? And
16 you told me you weren't sure, is that right?

17 A. I'm sorry. I don't remember that.

18 Q. Did you say you'd have to think about it?

19 A. I don't remember the question you asked.

20 I agree with the policy of having six
21 locations, you have to have six complete locations.

22 Q. When you talked to us in February, did you
23 say you'd have to think about it?

24 A. I honestly don't remember the questions that

1 you asked.

2 Q. Now, is it possible if we enter Mr. Parker's
3 four locus search in this case that ten profiles come up
4 as candidate matches? Is that possible?

5 A. Yes.

6 Q. Let's talk about candidate matches to make
7 sure we're all on the same page.

8 When I say, "candidate match," I'm using the
9 term you guys use. Is that the term you use?

10 A. Yes.

11 Q. Okay.

12 That just means when you type in the numbers
13 on the computer, a list of numbers comes up, profiles?

14 A. Potential matches, yes.

15 Q. We're not saying those ten people are guilty,
16 right?

17 A. Correct.

18 Q. We're not saying that they are positive
19 matches, are we?

20 A. No, they need to be verified.

21 Q. We're saying they're candidate matches, and
22 "candidate" means maybe they could be matches?

23 A. Correct.

24

Q. But you need to investigate those in order to

81

1 see if they're a real match, right?

2 A. We would have to verify them, yes.

3 Q. In fact, for law enforcement, the whole
4 purpose -- or not the whole purpose, but one of the
5 critical purposes of this whole DNA index system is that
6 you can take like unknown profiles from a male under
7 fingernails, submit it, and then it might come out say,
8 "Hey, it's Joe Smith who just got out of prison for rape
9 in the neighborhood."

10 That's a very powerful lead for investigators,
11 isn't it?

12 MR. HOVEY: Objection, Judge. I think that
13 depends on the way you look at the case.

14 MR. O'REILLY: Is that a legal objection?

15 THE COURT: I'll permit the witness to answer.

16 MR. O'REILLY: Now, we were talking about the
17 purposes of this whole DNA index system, and one of the
18 purposes is investigation, is that right?

19 THE WITNESS: Yes.

20 Q. So for example, if a police officer came to
21 the lab and said, "We have some fingernails scrapings
22 from a victim," you could test the fingernails to start
23 with, right?

24 A. Yes.

82

1 Q. And then you might come up with a male
2 profile, right?

3 A. It would still have to meet the criteria set
4 to be able to search it in the database. You still have
5 to have six complete.

6 Q. I understand that. I understand about your

7 protocol. We talked about your protocol and waiving and
8 all that.

9 I'm asking this hypothetical. Just tell me if
10 you agree with each step.

11 It's useful, this index system, if you have,
12 for example, a victim with an unknown male's profile
13 under her fingernails, you can then take that and you
14 could submit it to the convicted offender database,
15 correct?

16 A. If it meets the criteria.

17 Q. You could submit it and get the results that
18 would just be called candidate matches, yes?

19 A. Yes.

20 Q. And those might match an offender in the
21 neighborhood, right?

22 A. It's possible.

23 Q. And then they would investigate that to see
24 if that person did the crime or was out, right?

1 A. It's possible, yes.

2 Q. Okay.

3 But you say that in this case, "Well, We're
4 only at four, and so the policy doesn't allow it," is
5 that a fair statement?

6 A. Yes.

7 Q. You're not saying that if we enter these four
8 that we won't get possible leads to show whose DNA is
9 under the fingernails; you're not saying that, are you?

10 A. I'm saying that our policy is six, and this
11 is only two complete and two incomplete.

12 Q. So if we take -- I'll call it Don's profile,
13 now, right? The profile that the analyst suggested,
14 okay? That four locus --

15 A. Yes.

16 Q. So what you're telling us is -- let's just
17 not talk about policy for a minute, agreed? I want to
18 talk about science. Okay?

19 So if you sit policy down and just talk about
20 science, we talk about Don's profile, the profile under
21 the right fingernails, the four locus profile, that's

22 what I'm asking you about, now, okay?

23 A. Uh-huh.

24 Q. Now, as a matter of science, you can't say

84

1 that were we to enter that four locus profile into the
2 database it will fail to come up with somebody in the
3 convicted offender database? You can't say that, right?
4 Because it could.

5 A. It could. The frequency, like I said before,
6 it's 1 in 45 to 1 in 147, so that is the potential of
7 hits you could have. It could hit on every forty-fifth
8 person.

9 Q. It -- well --

10 A. It's possible.

11 Q. But you don't know how many it's going to hit
12 on, right?

13 A. All I can do is estimate.

14 Q. Let's talk about -- and that estimate can be
15 off by ten-fold?

16 A. Possible, yes.

17 Q. And so we all agree then if we get this
18 search that Mr. Griffin is asking for we might come up
19 with the person whose DNA is under her fingernails?

20 MR. MALONEY: Objection to the form of that
21 question.

22 THE COURT: She can answer. I'll let her.

23 THE WITNESS: You can come up with a lot of
24 potential hits.

85

1 MR. O'REILLY: But we could come up with the
2 person whose DNA is under that fingernail; that's
3 important, right?

4 MR. MALONEY: Objection.

5 THE COURT: She can answer.

6 THE WITNESS: It's possible.

7 MR. O'REILLY: But your policy says no, right?

8 At least today?

9 A. Our policy is six, and that allows us to
10 exclude people.

11 Q. Okay.

12 Again, we agreed we weren't talking -- we're
13 talking about investigative leads, though, right?

14 A. That's what you are talking about.

15 Q. But the policy -- okay.

16 Now, it's not -- it's fair to say that there
17 might be ten candidate matches that hit, right?

18 A. Possible, yes.

19 Q. Or it could be a hundred?

20 A. Or it could be a thousand.

21 Q. Now -- but it's also fair to say if we're
22 only looking at convicted offenders, those can be
23 eliminated right on the screen and no files need to be
24 pulled, right?

1 A. No. What is going to happen with this case,
2 you're going to get a set of samples that hit because of
3 the search, and you only have the four loci, you are not
4 going to be able to exclude any more.

5 What you will -- then they have to be
6 verified. Those will have to be verified.

7 Q. But you don't need to pull the files?

8 A. No, but they will have to verify them. They
9 will have to redo the analysis.

10 Q. Well, when you say, "redo the analysis," you
11 don't mean they have to redo the DNA?

12 A. Yes, they do. Yes, they will. To verify a
13 hit, that is part of our policy. They have to go back
14 and redo the DNA analysis.

15 Q. Well, let me give you this.

16 If ten candidate matches come up and we're
17 there in the lab, we say, "Here, we've got ten possible
18 matches," we could sit down and we could say right on
19 the face of that computer screen and print out, we can

20 say, "It's not this guy, right"?

21 A. It would depend on the stringency of the
22 search.

23 Q. I'm saying --

24 A. Most likely with the four, just searching at

87

1 four loci, you're not going to be able to exclude the
2 people.

3 Q. Let me ask you this.

4 You search moderate stringency, right? So --
5 we agree with that search?

6 A. Okay.

7 Q. So it's nothing to do with stringency. I'm
8 asking you, it can be done on the face of the computer
9 screen and the printout?

10 A. It's possible that you could eliminate a few

11 of them. But you're not going to eliminate all of them
12 that way.

13 Q. Now, let's not talk about eliminate. Let's
14 talk about investigative leads.

15 Right here, that moment we would have our
16 investigative leads, right?

17 A. You would have ten candidate matches.

18 Q. Now, that would take some time, wouldn't it?

19 I mean, I'm not saying this takes no time to
20 get to where we just were talking about. That would
21 take some time and effort, yes?

22 A. I'm sorry. I'm not sure what you mean.

23 Q. Well --

24 A. What would take some time?

1 Q. To do this search. It would take time to go
2 to the lab, yes? To type it into the computer? That

3 would take time.

4 A. It takes time, but it's not a lot of time to
5 search. It's the verification afterwards that takes
6 some time.

7 Q. Okay.

8 So it would take a very little amount of time
9 to search?

10 A. Correct.

11 Q. And then more time to verify, which is your
12 policy?

13 A. Correct.

14 Q. Would you waive that policy?

15 A. No.

16 Q. Okay.

17 It's your policy, right?

18 A. Correct.

19 It's not only ours. It's part of the national
20 DNA index system policy. It's to verify any candidate
21 hits you have.

22 Q. And the reason you, the reason you verify
23 them is you want to make sure you don't go running down
24 the road investigating a suspect if it ain't (sic) him,

1 right?

2 A. Right.

3 Q. Now, once we get to that point, this might
4 take an hour or two to do all this?

5 A. To verify is going to take weeks. To verify
6 the hits you still have to go back and do the DNA
7 analysis from the original samples to insure the
8 quality.

9 Q. Well, let me -- let me ask you this. Because
10 we might be talking at cross purposes here.

11 You're saying that every time -- like Karen
12 Kucharic in this case, she did a DNA database search.
13 Now, if she came up with -- I'm sure they have done it
14 in a lot of cases -- if they come up with a search and
15 they come up with ten hits, you're saying that they
16 re-run the DNA on all those people? Is that your
17 testimony?

18 A. The first thing you have to do is see if the
19 case analyst can exclude any of those hits. And then
20 any of those they can't exclude, yes, the indexing
21 personnel will have to go and pull those samples and
22 re-analyze them.

23 Also on top of that, they will have to
24 re-analyze or verify the fingerprint cards that come

90

1 along with those --

2 Q. Now, how often is it -- by the way, have you
3 ever actually been there and done that?

4 A. I have never worked in the index lab, no.

5 Q. Have you ever seen yourself how often it is
6 that you can't exclude based on the screen and the
7 printout? Do you know it yourself?

8 A. No, I don't. But that's because our policy

