SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,	
Plaintiff,	
vs.	Case No. FVI900518
JOHN HENRY YABLONSKY,	
Defendant.	

APPEAL FROM THE SUPERIOR COURT OF SAN BERNARDINO COUNTY
REPORTER'S TRANSCRIPT OF JURY TRIAL
JANUARY 18, 2011, JANUARY 19, 2011, JANUARY 20, 2011,
JANUARY 24, 2011, JANUARY 25, 2011, JANUARY 27, 2011,
JANUARY 31, 2011, FEBRUARY 2, 2011, and FEBRUARY 3, 2011

APPEARANCES:

MICHAEL A. RAMOS
District Attorney
BY: **John Thomas**
Deputy District Attorney

For the Defendant:

PHYLLIS MORRIS-GREEN
Public Defender
BY: **David Sanders**
Deputy Public Defender

C E R T I F I E D C O P Y

Reported by:

Shawna Manning, CSR No. 12827
Official Reporter
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Pro Tempore Reporter

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VICTORVILLE, CALIFORNIA; JANUARY 25, 2011;
DEPARTMENT NO. V-2 HONORABLE JOHN M. TOMBERLIN, JUDGE
P.M. SESSION
(Appearances as heretofore mentioned.)
(Shawna Manning, Official Reporter, CSR No. 12827.)
-oOo-

(Whereupon the following proceedings were held in open court in the presence of the jury:)

THE BAILIFF: Remain seated. Come to order. Court is now in session.

THE COURT: Good afternoon, ladies and gentlemen. Back on the record in the case of People of the State of California versus John Henry Yablonsky who is here with his attorney, David Sanders. John Thomas is here along with his investigating officer, Detective Alexander. On the witness stand is Monica Siewertsen, and she's still under oath in direct examination.

You may continue.

MR. THOMAS: Thank you, your Honor.

BY MR. THOMAS:

Q Before the lunch hour, we were talking about the analysis that was done on Item A dash 11.

Do you recall that?

A Yes.

Q When was that actual analysis done?

A Between January 7th and January 13th of 2003, referring to the front page of my report.

Q Okay. You said there was an analysis done on the non-sperm fraction and an analysis done on the sperm fraction; is that correct?

A They would be done at the same time.

Q Then as far as your analysis goes, you were able to obtain a full DNA profile as far as those 13 markers are concerned on both the non-sperm fraction and the sperm fraction?

A That's correct.

Q I'm going to show you what's been marked Exhibit 44.

May I approach the witness?

THE COURT: You may.

BY MR. THOMAS:

Q Showing you Exhibit 44, and I've put it up on the screen there.

If you can, explain to the jury what exactly Exhibit 44 is.

(Whereupon Exhibit 44 was marked for identification.)

THE WITNESS: This is the table, which is included in my report. It's the numerical results regarding the DNA typing profiles I obtained from the non-sperm and sperm fractions from the vaginal swab. The left-hand column is the actual item that was examined. The top is the non-sperm and the bottom here is the sperm fraction.

There's two separate tables. During this

analysis, we attempt to look at the 13 areas along the DNA molecule and the sex determining chromosome. We do that using two commercially available kits that look at nine and seven locations combined. Three areas; this area here, which is the area on the sex determining chromosomes; this area here on Chromosome Number 7, and the area on Chromosome Number 3, which is, I believe, here if I can see correctly and up here on the top.

Those areas are the same areas, and they're looked at using both kits. That serves as an internal quality control to ensure that the same sample is being analyzed in both situations. We expect the same results. The first row at the top contains those addresses on the DNA molecule that I mentioned earlier. Those are the particular areas that we're looking at.

The first actual result area is the area on the X and the Y chromosome. As I mentioned earlier, an area where it has an X means that that particular biological sample was donated by a female, and the area that has the X and Y, that particular sample was donated by a male.

The next area as we look at it, basically once we've determined the DNA typing profile for the questioned samples, we put that in this particular table and that would be a record of the actual DNA typing profile that was obtained.

Q Then as far as the particular profile or profiles that you obtained from this particular sample,

how would you go about excluding certain individuals or including certain individuals?

A Often -- most of the time in forensic situations, DNA analysis is a comparative process. I can't obtain a DNA typing profile and say, I know this profile came from this individual just by obtaining the profile. I have questioned samples, which I have DNA profiles from, and I have reference samples, which I obtain DNA typing profiles from. A reference sample is a sample that's collected from a particular individual, so we know the source of that sample.

Often in forensic situations, you would have the DNA typing profile that you obtained from a questioned sample. You would have a DNA profile that you obtained from a reference sample or known sample, and you would compare the two results.

If we, for discussion sake, say that the first line here is from a questioned sample and the second line is from a reference sample, the result at the first area is -- I can't see that. Is a 12, 15. The result for our hypothetical reference sample is a 12. A 12 is different than a 12, 15. Remember the 12 refers to a 12, 12. That particular individual, if that were a reference sample, would have inherited two copies of that one result.

Just using this one area if hypothetically this were a questioned sample and a reference sample, I would be able to exclude this individual as being the possible

source of this questioned sample because the 12, 15 is not the same as 12.

If, coincidentally, that result was the same, I would then move to the next area and compare the results from the questioned sample with the results from the reference sample.

In this case, I actually just have the one questioned sample, which was artificially divided into two in an attempt to obtain the female component of that fraction and the male component of that fraction.

Q As far as the first row of numbers, that sample would that be considered a reference sample for Rita Cobb's DNA?

A In this particular case, this sample is a vaginal swab, and in that situation a female component would be vaginal cells taken from the vaginal lining. That would be considered a reference sample from that individual.

Q And then I notice in one of the columns on the second column, going across under, I believe, it's D371358, there's a 15 coma 18 and then underneath it says with very weak 17.

What, if anything, does that indicate to you?

A When we have a single source sample, a sample that comes from one individual, we would not expect to see more than two results because we only have two copies of each of the areas that we look at. In this situation, I actually have three results. That

indicates to me that this was more than one person contributing to that DNA typing result.

In this particular situation, remember that this is one sample. It was a vaginal swab that was artificially separated into two components in an attempt to obtain a female profile and a male profile. The 15, 18 is the stronger result at this particular location. That would be consistent with being the major contributor of that -- that particular result, which would go along with the rest of the results that were obtained from that faction.

The weak 17 is consistent with the female portion of that sample, which is not unexpected. If we have one sample that we artificially divided into two, it's just an enrichment process where that's not an absolute. All of the female cells don't have to be present in the one fraction, and all the male cells don't have to be present in the second fraction.

In this particular situation, there is a very good separation of the two contributors. At this one location, there is a small amount of female DNA that's present in that sperm fraction of the sample.

Q Then that sperm fraction of the sample would be the unknown male donor?

A That's correct.

Q And then did you do some sort of statistical analysis as to that particular male profile and how often we can expect that to show up in random

individuals?

A Yes. As I had mentioned earlier, once we obtain a DNA typing result or a DNA typing profile, the next step would be to give an indication of how common or rare that particular profile is in the population. This particular profile, the one that the major component in this particular location and the rest of the results of the sperm fraction of that vaginal swab, are from a single male donor. That profile can be expected to occur at random among the following number of unrelated individuals.

We indicate or do a statistical estimated frequency of occurrence among three population groups, Caucasians, African Americans, and Southwestern Hispanics. In all three of those groups, that profile would be found on less than 1 in 6 billion individuals.

The reason we use three different population groups is those are the three most common groups that are present in the random population. It's to show that that particular profile is a rare profile in all populations. It's not very common in one population and very rare in another. It's very rare in all three of those population groups.

Q Okay. Then as far as the one-in-six-billion figure, that -- that's not the real number that you actually calculated; is it?

A No, it's not.

Q Going to the Caucasian males, what was the

actual number?

A 1.9 times 10 to the 14th. A billion is a 1 with nine zeros behind it. This particular value would be 1.9 with 14 zeros. So it is more rare than the 1 in 6 billion. The reason that I'm giving you the number of 6 billion is because the approximate world's population is between 6 and 7 billion. It's sort of a reference point.

Q Okay. As far as the statistical occurrence at random of this particular DNA profile, you would have to have several earths in order to come up with somebody at random that would have this particular profile?

A You would not expect -- it's possible that you could find someone else in the world's population that had this profile. It's also possible that you could sample ten earth's populations and not find it. It's a very rare DNA typing profile. It's a rare event.

Q Then as far as the calculations regarding this profile and your expected occurrence in African American males, what was that calculation?

A That was calculated as 1.1 times 10 to the 16th. That would be a one with 16 zeros behind it.

Q That's even more rare in the African American population?

A Potentially, but, again, this is not a calculation to determine which population group it may have come from. It's just there -- the calculation is to show that this is a rare profile in all the

population groups.

Every time you sample a group of people in order to determine an estimated frequency of occurrence, if you come up with a particular result and then you do the exact same samples over again with another group, you're going to get slightly different results with that group. The same if you were to take a dice and you were to throw it 50 times and record how often you saw each one. If you were to do that same experiment over again, you would not get the exact same results. You'd get very close to the same results, but you wouldn't get the same results.

These calculations, there's not an exact difference between population groups. It's to show that it's a rare event in all population groups.

Q Then as far as the population group of Southwestern Hispanic males, what was the calculation that you came up with?

A That value was 3.2 times 10 to the 13th. So that would be a three with 13 zeros behind it.

Q How many zeros do you need to get into the trillions?

A Excuse my hesitation. I'm Canadian and trillions, billions are different in America than in Canada. A billion is one with nine zeros behind it. A trillion is a one with 12 zeros behind it.

THE COURT: Would you say that again? In Canada, it's different?

THE WITNESS: In English or British at one point billions and trillions were switched. I believe now they use -- it's the same way. It's one of those things that I get confused about. So I prefer to use one with nine zeros, 12 zeros, 15 zeros behind it to prevent any confusion.

THE COURT: You didn't prevent confusion with me. I never heard that before, and I look for something new to learn every day. You say that at some point people in Britain might have said a billion meaning a trillion?

THE WITNESS: It was used the other way, yes.

THE COURT: Thank you. Did they become enlightened now?

THE WITNESS: As a matter of speaking, yes.

THE COURT: Should we defer to theirs?

THE WITNESS: We're in America so a billion is a one with nine zeros behind it and a trillion is a one with 12 zeros behind it.

THE COURT: Thank you. Sorry for interrupting.

MR. THOMAS: That's all right.

BY MR. THOMAS:

Q So going back to the chart, I think it was Exhibit 44, if we were to go out and we found a person, and I'm speaking just of the sperm fraction from the vaginal swab, if we were to find a person that matched that particular profile that's up there at all

13 locations, then would you have an opinion as to whether or not that person was the donor of that particular profile that you find up there?

A The calculated frequency of that profile is much less than 1 in 6 billion. So that would be a very rare event. In my opinion, it would be an unlikely occurrence for that to happen twice.

Q Then was there anything in your analysis in this case that caused any concern on your part that this analysis that you did was somehow not done correctly?

A No. The positive and negative controls at each of the steps were performed correctly. As I mentioned earlier, the case notes and report were reviewed by a second qualified individual before the report was put out.

Q You performed all these tests in accordance with the training that you received?

A Yes.

MR. THOMAS: Nothing further.

THE COURT: Mr. Sanders, you may inquire.

MR. SANDERS: Thank you.

CROSS-EXAMINATION

BY MR. SANDERS:

Q Ms. Siewertsen, when you received the samples in order to count the alleles --

A Okay.

Q -- you did not extract that sample? It was given to you, you just received a little vial; correct?