

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :

Respondent, :

-against- :

RAMON RIVAS, :

Defendant-Appellant. :
-----X



AFFIDAVIT

Ind. No. 3393/99

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss:

MARIE SAMPLES, being duly sworn, deposes and says:

1. I am Assistant Director of Forensic Biology at the Office of the Chief Medical Examiner, 520 First Avenue, New York, NY 10016. I have held the position of Assistant Director for 6 years, since 1997, and have worked for the Office of the Chief Medical Examiner for 13 years, since 1990.

2. On May 30, 2000, the forensic biology unit of our office received evidence vouchered in Ramon Rivas' case. That evidence consisted of a pair of jeans from Mr. Rivas, voucher number H851481, and underwear from co-defendant Gregory Martin, voucher number H851480. On June 3, 2000, our office received a blood sample from the victim, Jason Mercado, voucher number K302506. According to my records, no other evidence was submitted to the forensic biology unit of our office with respect to this case. Specifically, the forensic biology unit did not receive a knife in connection with this case.

3. PCR DNA testing was done on both the jeans and the underwear, comparing the DNA alleles of the victim to those found on the jeans and underwear. The DNA alleles of Mr. Mercado were the same as the DNA alleles found on Mr. Martin's underwear and, therefore, Mr. Mercado could be the source of the blood on the underwear. However, the DNA alleles on Mr. Rivas' jeans, did not match those of Mr. Mercado. Consequently, the blood on Mr. Rivas' jeans

was not Mr. Mercado's. Testing by our office further determined that the blood on the jeans was from two male individuals.

The results of this testing were entered in the local, state, and national DNA databanks. These databanks exist to compare samples from criminal cases to other criminal cases and to samples obtained convicted offenders.

4. The findings in this case are discussed in Laboratory Report Number FB00-1140, dated September 6, 2000, by analyst Amrita Lal. I was the supervisor on this case. This report was sent to Assistant District Attorney Nina Carlow at the district attorney's office via facsimile on September 13, 2000, and is attached as Exhibit A.

5. On April 2, 2001, this office received a letter from Julie Pasquini, the DNA Databank Coordinator, via facsimile, which stated that a search of the State DNA Index System resulted in a match between one of the blood samples on the jeans and co-defendant Julio Sanchez. This information was sent to the district attorney's office, via facsimile, on April 2, 2001. Similarly, a letter from Ms. Pasquini received on March 22, 2002, via facsimile, stated that a search of the State DNA Index System resulted in a match between the other blood specimen on the jeans and co-defendant Angel Cordero.

6. Due to underfunding and understaffing at the Office of the Chief Medical Examiner, it has been office policy since 1999 to take for DNA testing only those cases involving sex offenses or homicides. Before that time, this office only accepted evidence from homicide cases and selected sexual assault cases.


7. Under special circumstances, this office will complete DNA testing in other types of cases. By special request from a district attorney, and based upon the circumstances of the particular case, the forensic biology unit may decide to test evidence from other cases.

8. Based on information provided by Assistant District Attorney Karen Yaremko, our office agreed to test the evidence in this case. A.D.A. Yaremko informed me that the blood on the jeans and the underwear could link the victim to Ramon Rivas and Gregory Martin. In

response to my question about whether any of the co-defendant's were injured and could possibly be the supplier of the blood, A.D.A. Yaremko stated that Angel Cordero was injured. I requested a DNA sample from Mr. Cordero.

9. On May 30, 2000, I spoke with A.D.A. Yaremko about testing a knife in the case, voucher number H851468. A.D.A. Yaremko stated that she believed that the knife had been fingerprinted, would find out where the knife was, and would get it to the Office of the Chief Medical Examiner for testing. This same day, I informed A.D.A. Yaremko that, because forensic biology unit policy dictates that testing in homicide and sexual assault cases have priority, it would take 60 days to complete the testing in this case. The average time to complete DNA testing, in 2000, once the forensic biology unit had received all of the evidence and the necessary blood samples, was approximately 60 days.

10. On June 12, 2000, which was my last conversation with A.D.A. Yaremko regarding this case, I reminded her that we still needed the suspect Angel Cordero's blood and the knife. On both June 12 and 13, 2002, I spoke with A.D.A. Carlow and explained these same issues to her, as well. I never received either the knife or the sample of Mr. Cordero's blood.


MARIE SAMPLES, M.S., Assistant Director

Sworn to before me this

28 day of JANUARY, 2003.


Notary Public, State of New York

EUGENE LIEN
Notary Public, State of New York
Registration No. 01LIC011002
Qualified in Queens County
Commission Expires Aug. 10, 2006