

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

PEOPLE OF THE STATE OF ILLINOIS

v.

MARNI YANG

GENERAL NO. 09 CF 926

PEOPLE'S OMNIBUS MOTION FOR DISCOVERY – PRODUCTION OF
WRITTEN AND RECORDED STATEMENTS AND SCIENTIFIC REPORTS

Now comes Michael G. Nerheim States Attorney Lake County Illinois, by and through his assistant Jason R. Humke and requests that the Court grant limited Discovery to the People in this case for the People to investigate and respond to the Defendant's Post-Conviction Petition. In support of said motion the People state as follows:

1. On October 1, 2019 the Defendant filed a Post-Conviction Petition with several attached exhibits purporting to be witness statements and reports regarding scientific tests.
2. On February 27, 2020, the People filed a Motion to Dismiss this Petition in its entirety or, in the alternative, to partially dismiss the claims within the Petition that do not merit an evidentiary hearing.
3. For purposes of the People's Motion to Dismiss, the People were required to accept as true the factual allegations made within the Defendant's Petition that were not contradicted by the record. *See People v. Sanders*, 2016 IL 118123, ¶ 42.

4. The People now seek through this discovery motion to investigate the merits of the Defendant's claims raised in her Petition and subject those claims to the adversarial testing they deserve.
5. The People have recently discovered that the defense appears to be in possession of videos, documents, and other materials that directly relate to the exhibits supporting the Petition. The People seek these materials. All of these materials sought would normally be required to be turned over by the defense pursuant to Supreme Court rules on Discovery if this were an active criminal prosecution.
6. The People recognize that these Discovery rules are inapplicable in a post-conviction proceeding, but the People believe good cause exists for the Court to exercise its discretion and order the disclosure of these materials. *See People v. Hickey*, 204 Ill.2d 585, 602 (2001). Each of these items is discussed below.

1. Video Interview of Jesse Delgado (Petition, Exhibit 7)

7. The first item the People seek relates to Exhibit 7 of the Defendant's Petition. This exhibit purports to be an affidavit from a person named Jesse Delgado who claims he stole the Defendant's 9mm Beretta.
8. The People recently discovered while watching the ABC News show "20/20" titled "Murder & Scandal in Chicagoland" that the Defendant appears to possess a video-recorded interview with this Jesse Delgado, which was apparently provided to "the 20/20" program. Short clips of this video-recorded interview with the defense investigators were aired on this show. This video interview of Delgado was not made part of the Defendant's Post-Conviction Petition. From the short clips of this

interview that were aired on "20/20" it appears Delgado elaborates on his claim about stealing the Defendant's 9mm Beretta.

9. The People contend that the video in the possession of the Defendant is necessary for investigating this claim and exposing it to adversarial testing. Examining the prior recorded statements of this individual would also further the truth-seeking process. This is also not a novel or unusual request. In an active criminal case, this information would be required to be disclosed by the defense pursuant to Supreme Court Rule 413(d)(i).

2. Any Other Written or Recorded Statements of Witnesses

10. As a corollary to the above request, the People are requesting that the defense turn over any other written, video, or audio recorded statements of the witnesses listed in the Post-Conviction Petition that were not previously enclosed as exhibits. Given that the defense is already in possession of a video recorded interview from Jesse Delgado, it is likely other written statements or video interviews also exist of Emily Yang, Andrew Yang, Brandon Yang, Larry Merar, Francine Merar, Sal Devera, or any other person the Defendant will seek to present as a witness. It would be essential for the People to review any prior video, audio, or written statements from these witnesses to investigate the veracity of their claims. All of these statements would also be required to be disclosed by the defense pursuant to Supreme Court Rule 413(d)(i).
11. The People also request that the defense be directed to produce the notes taken by their investigator Perry Meyers summarizing the conversation he had with Christi Paschen outside of her residence on October 24, 2019. These notes summarizing

Christi Paschen's oral statements would also be subject to disclosure pursuant to Supreme Court Rule 413(d)(i).

3. Video and Photographs of Testing by Arthur Borchers (Petition, Exhibit 11)

12. Exhibit 11 of the Defendant's Petition is a June 28, 2019 "Suppressor Forensic Analysis Report" authored by Arthur Borchers. This report appears to summarize the experiments Borchers performed to form his opinions regarding the silencer evidence adduced in this case. Found at "Page 11 of 33" to "Page 12 of 33" of this report, it states "[t]he testing was recorded at 60 frames per second with two tripod mounted Canon digital cameras. Photographs and video recordings of the testing *are included on the attached DVD.*" (Exhibit 11, pages 11-12). (emphasis added).
13. No DVD containing these photographs and video recordings was enclosed with the report in this attached Exhibit 11. From the description of this DVD contained in the report, it appears to demonstrate the actual testing process undertaken by this purported expert to form his conclusions.
14. The People contend that this DVD demonstrating the testing process is necessary to expose this report to adversarial testing and to evaluate the reliability of these experiments by subjecting them to independent analysis. This request is also not novel or unusual. In a criminal case, this information would be required to be disclosed by the defense pursuant to Supreme Court Rule 413(c).

4. Complete Report From John Larsen (Petition, Exhibit 44)

15. Exhibit 44 of the Defendant's Petition is a 23-page report from John Larsen concerning tests Larsen performed on a foam mannequin and the basis of his

opinion that the person who shot the victim in this case was taller than the Defendant.

16. The report references 8 appendices (A-H), which are listed on "Page 23 of 23" of the report. The items described in these appendices were not enclosed with Exhibit 44 to the Post-Conviction Petition.

17. As described on "Page 23 of 23" of Exhibit 44, these appendices contained the following materials:

- a. Larsen Curriculum Vitae and accompanying John Louis Larsen Law Enforcement Instructional History (Appendix A)
- b. July 15, 2017 protrusion rod placement in mannequin (Appendix B)
- c. August 17, 22 & 25, 2017 LFI laser study reports and photographs on CDs (Appendix C):
 - i. August 17, 2017 laser study at LFA
 - ii. August 22, 2017 laser study with live exemplar person at LFA
 - iii. August 25, 2017 laser study and live fire at range
- d. September 24, 2017 LFI laser study report focused on gunshot wound with photographs on CD (Appendix D)
- e. March 22 & 23 LFA photographic inventory of trial documents and materials associated with this case on CD (Appendix E)
- f. May 17 & 24, 2018 examination of People's Exhibit 43, tan turtleneck short sleeve shirt, and People's Exhibit 42, black maternity dress, photographs on CD (Appendix F)

- i. May 17, 2018 LFA received and photographic documentation and chain of custodies of People's Trial Exhibits from Lake County Clerk of the Circuit Court, Department of Criminal and Traffic. Photographs of CD
- ii. May 24, 2018 detail examination of exhibits with photographic documentation both general and digital microscopic on CD
- iii. May 24, 2018 Infrared (IR) photographic examination on CD
- g. July 4, 2018 LFI blue tarp kitchen floorplan photo log on CD (Appendix G)
- h. May 7, 2019 LFA Mannequin sequence numbered M.E. gunshot wounds photographs on CD (Appendix H).

18. From the description of these materials, they appear to contain significant information regarding the testing process that formed the basis of Larsen's proffered opinions. The People contend that the materials contained within these appendices is necessary to expose Larsen's report (Exhibit 44) to adversarial testing and to evaluate the reliability of these experiments by subjecting them to independent analysis. This request is also not novel or unusual. In a criminal case, this information would be required to be disclosed by the defense pursuant to Supreme Court Rule 413(c).

5. Complete Shell Video Analysis Report (Petition, Exhibit 4)

19. Exhibit 4 of the Defendant's Post Conviction Petition is a 39-page report from Arthur Borchers regarding an analysis he conducted on a Shell Gas Station surveillance video.

20. This report lists 7 appendices (A-G) in the Table of Contents. (Petition, Exhibit 4, page 1 of 39). The report indicates that appendices B, F, and G can be found on a DVD that is enclosed with the report.
21. No DVD was included with the report filed with the Petition as Exhibit 4.
22. According to the Table of Contents describing the material in these three appendices enclosed on the DVD, they contain the following: Extracted .BMP and .TIF images (Appendix B), Smoothed Adobe Premiere 640x480 series with cropped and isolated car (Appendix F), and Larsen Forensics & Associates Images of Shell Station on July 31, 2018 (Appendix G).
23. The People contend that the materials contained within these appendices is necessary to expose this report (Petition, Exhibit 4) to adversarial testing and evaluate the reliability of this "forensic video analysis" by subjecting it to independent review. This request is also not novel or unusual. In a criminal case, the information requested would be required to be disclosed by the defense pursuant to Supreme Court Rule 413(c).

6. Complete Testing Reports From Lee McCord Polygraph Examinations

(Petition, Exhibits 26, 40, 41)

24. Exhibits 26, 40, and 41 of the Defendant's Petition contain summary polygraph examination results of the Defendant, (Petition, Exhibit 41), her son Andrew Yang, (Petition, Exhibit 40), and her father Larry Merar, (Petition, Exhibit 26).
25. Should the Court not dismiss these claims regarding polygraph examinations outright, the People wish to subject these polygraph examinations to adversarial testing as well. Polygraph testing has been held to be inherently unreliable. *See.,*

e.g., People v. Gard, 158 Ill.2d 191, 201 (1994). This is because polygraph results can be manipulated in a variety of ways. *See People v. Baynes*, 88 Ill.2d 225, 238 (1981). This is particularly true depending on the procedures followed during the polygraph examination and the circumstances surrounding the examination. *Id.*

26. From the limited summary reports provided as exhibits to the Post-Conviction Petition, the People are unable to evaluate the testing procedure used to conduct the proffered polygraph examinations. The People therefore request the complete testing report of these examinations to include: (1) any pre-screening questionnaires and release forms completed prior to the examinations, (2) the type of equipment used to conduct the examination, (3) any video or audio recordings taken of the examinations, (4) the duration of the examinations, (5) all charts, graphs, and data generated from the examinations, (6) a complete list of written questions posed during the examinations including balancing or control questions, and (7) whether this complete list of questions was provided to the persons examined in advance of their examinations. This request is also not novel or unusual. In an active criminal prosecution, this information would be required to be disclosed by the defense pursuant to Supreme Court Rule 413(c).

WHEREFORE, the People respectfully request that the court grant the People's Omnibus Motion for Discovery.

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

By:

JASON R. HUMKE
Assistant State's Attorney

Digitally signed by Humke, Jason R.
DN: cn=Humke, Jason R., ou=Department 1,
email=jhumke@lakescountyil.gov, o=Illinois
Date: 2009.06.28 12:19:25 -0500