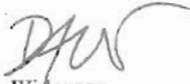




**FORENSIC CASE REVIEW:**  
**Commonwealth of Massachusetts v. Benjamin LaGuer**  
Case No. 83-103391

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March 30, 2006



## **I. BACKGROUND**

A request was made by Rep. Ellen Story of Boston, MA to perform an examination and analysis of the investigative information and forensic testing performed in the case of Commonwealth of Massachusetts v. Benjamin LaGuer.

The comments, discussion, and opinions outlined in this report are based on case information which includes, but is not limited to, the timeline of events, police/scene reports, statements, affidavits, evidence inventory reports, and forensic laboratory data and reports (serology/DNA). The purpose of this report is to summarize Mr. Wideman's assessment, examination, and evaluation of the criminal investigation and forensic testing in this case as they relate to the events that took place on July 13, 1983.

## **II. CASE HISTORY**

July 13, 1983: 59 year-old Lenice Plante reports being raped; a neighbor discovers Ms. Plante in her apartment with her ankles and wrists bound with a hairdryer cord and telephone wire. According to Lt. Hebert, a tenant at the apartment complex states that she saw possibly two males outside her window. Det. Carignan reports that Ms. Plante stated to him that she saw her assailant enter Mr. LaGuer's apartment (*I am not familiar with the crime scene as I have not reviewed or examined any scene diagrams or photographs and I do not know exactly what position Ms. Plante was in when she was discovered at the scene*). Based on Ms. Plante's statement, a warrant was issued that authorized a search of Mr. LaGuer's apartment for items stolen from the victim as well as a white sock with yellow/black trim to match a sock found at the crime scene. Since Mr. LaGuer was not home at the time, the building manager (Raymond Cochran) allowed Det. Carignan to enter Mr. LaGuer's apartment. According to the July 14, 1983 "Return of Officer Serving Search Warrant" form signed by Det. Carignan, "nothing" was seized or collected from Benjamin LaGuer's apartment. Benjamin LaGuer voluntarily went to the police station and agreed to being photographed and fingerprinted. Mr. LaGuer was told by the police that fingerprint evidence was found at the scene and that Ms. Plante could identify her assailant. Based on a photograph line-up, Benjamin LaGuer was arrested.

## **III. FORENSIC EVIDENCE EXAMINATION AND TESTING**

### **A. Fingerprint Evidence**

A set of four fingerprints were found on the base of the trimline telephone recovered from the crime scene. The cord of this phone was used to bind the victim's wrists. It was determined that the fingerprints found on the phone did not match Benjamin LaGuer's known fingerprints. The results of this fingerprint comparison from 1983 were not shared with Benjamin LaGuer or his attorneys until 2001. I am not sure why this fingerprint evidence was withheld from Mr. LaGuer. It would have been beneficial to this investigation to cross-reference this unknown fingerprint found on evidence recovered from Ms. Plante's apartment with known fingerprints

from convicted offenders and other persons arrested in the past. Also, it would have been worthwhile to compare the foreign fingerprint in this case to fingerprint evidence recovered in other unsolved cases for possible linkage.

### **B. Serology Testing**

1. Fourteen (14) items of evidence were collected from Lenice Plante's apartment including garments, bloody tissue paper, and a white sock with yellow/black trim. In addition, a rape kit containing various swabs, smears, and clippings was collected from Ms. Plante. The items collected from Ms. Plante's apartment as well as the rape kit were submitted to the Massachusetts Department of Public Safety Crime Laboratory.

Approximately a week later, other items of evidence were submitted to the MA DPS Crime Laboratory including "underclothes" belonging to Benjamin LaGuer. All of this evidence was examined and analyzed by Mark Grant (Chemist, MA DPS Crime Laboratory).

2. Mr. Grant performed the serological testing in this case. His handwritten laboratory notes indicate that he visually examined and tested Mr. LaGuer's underwear (specifically the interior crotch area) on the same day, at the same time, and in the same space as the items collected from the crime scene and from Ms. Plante (rape kit). Mr. Grant examined Mr. LaGuer's underwear while also examining such items as pillows, bloody tissues from the couch, and other items recovered from the scene as well as items from the rape kit collected directly from Ms. Plante. It is unknown if Mr. Grant examined each item while the other items of evidence were still packaged. Also, it is not known if Mr. Grant changed his gloves, cleaned his instruments (tweezers, scissors, etc.), or cleaned his bench in between each item. If he did not follow these standard operating procedures, then there is a real possibility that cross-contamination could have occurred during his examination of these items. In addition, it is not an accepted practice to visually examine and test items of evidence collected from a crime scene at the same time and in the same space as items collected from the victim and suspect (i.e., examining Mr. LaGuer's underwear while examining items collected from the crime scene and from the victim during the same time period and in the same laboratory space). It is best to examine and test evidence items from the crime scene, victim, and suspect at preferably different times and/or dates. Regardless, all items from one source (crime scene, victim, or suspect) should be examined one item at a time while cleaning the laboratory bench and instruments and changing gloves in between each item. Then, at a different time and/or date on a clean laboratory bench while wearing new gloves and using clean, sterile instruments, a laboratory analyst can proceed to examine evidence items originating from another source. Again, from examining Mr. Grant's handwritten laboratory notes, it does not appear he followed this generally accepted practice and standard operating procedure.

3. Mr. Grant detected human blood on the tissue paper recovered from the couch at the crime scene. He stated in his 11/03/1983 report that **the blood type of this stain was type "B"**. Mr. Grant testified to this blood typing result on 05/22/1989. Mr. LaGuer's known blood type is "B". In 2001, DNA testing of this same bloodstain on the tissue paper revealed that the blood originated from Ms. Plante, who is blood type "O". Mr. Grant's handwritten laboratory notes from his ABO typing test are not available for review. Therefore, it is not clear from the case information how this error or mistake occurred.

4. Mr. Grant detected seminal fluid and spermatozoa on the pubic hairs recovered from Ms. Plante. No semen or spermatozoa were found on Ms. Plante's swabs, smears, or underwear (*the absence of sperm on the swabs, smears, and underwear is inconsistent with a continuous, 8hr sexual assault, especially with evidence collection occurring very soon after the crime*).

5. Mr. Grant, in reference to the white sock with yellow/black trim recovered from the crime scene, stated in his 11/03/83 report that "testing indicated the wearer of the sock to secrete group "O" blood factors in the perspiration deposited on the sock". This blood type matches the known blood type of Ms. Plante.

6. Mr. Grant tested the interior of Mr. LaGuer's underwear for the presence of acid phosphatase (AP), an enzyme present both in seminal fluid and vaginal secretions. His AP test results were negative. Mr. Grant stated in his 11/03/83 report that "nothing of apparent evidential value was detected" on this item. It is not clear whether Mr. Grant was testing Mr. LaGuer's underwear for seminal fluid or vaginal secretions. In 2001, it would have been probative to test the interior of Mr. LaGuer's underwear for the presence of female DNA. If Mr. LaGuer in fact had vaginal intercourse with Ms. Plante, especially over an 8hr period, it is very possible that biological material would have transferred from her vagina to his penis and then from his penis to his underwear. Therefore, one might expect to find Ms. Plante's DNA on his underwear. To date, I do not believe such testing has been conducted.

### **C. DNA Testing**

1. In 2001 and 2002, evidence from this case was analyzed by Edward Blake of Forensic Science Associates. His laboratory conducted blind testing of the evidence. Therefore, Mr. Blake and his associates were unaware that:

- a) Mr. LaGuer's socks and underwear appeared as evidence in this case although "nothing" was supposedly taken from his apartment as indicated in the Search Warrant Return and sworn testimony of

the detective on the case. *When were the socks and underwear collected and by whom? Exactly where were these items recovered from? Who handled these items and where were they stored?*

b) Discrepancies existed between the two inventories of evidence in May 1989 as Mr. LaGuer's underwear disappeared while in the District Attorney's custody.

c) The evidence seal on the box of case evidence was broken when the box was found in 1999.

d) The fingerprint report stating that the fingerprint evidence found on the telephone that was used to bind the victim did not match the known fingerprint of Mr. LaGuer.

Such information would have been beneficial to Mr. Blake prior to his testing of the evidence, writing his laboratory reports, and speaking with the news media.

2. Mr. Blake did not find any sperm on the vaginal and rectal swabs collected directly from Ms. Plante, which confirmed Mr. Grant's findings in 1983. Therefore, no male DNA was found on these items despite an 8hr sexual assault.

3. Regarding his examination of the matted pubic hairs, Mr. Blake reported observing only a "few" sperm (*given that thousands to millions of sperm are present in a normal volume of ejaculate, finding only a "few" sperm is not only inconsistent with an 8hr sexual assault but is not the number of sperm one would expect to find in "matted" pubic hairs containing seminal fluid*). Mr. Blake himself admitted in a December 1999 affidavit that a large amount of sperm are normally present in seminal fluid (100,000 sperm per microliter) and "since it would normally take tens of microliters of semen to cause pubic hair to be matted, it can be expected that there are hundreds of thousands of spermatozoa in this sample". *Yet, Mr. Blake only observed a "few" sperm in the sample.*

4. Mr. Blake states in his "Report 1 - August 15, 2001" that "a small quantity of spermatozoa was detected on the matted pubic hairs"... "these spermatozoa must be combined with all remaining spermatozoa from the unextracted hairs and matted hair slide(s) together with any other specimens from the vaginal area in order to have even a chance for a successful PCR based DNA typing analysis". Although it is not uncommon for forensic DNA laboratories to combine samples from a single source to improve their chances of yielding relevant test results, I do not believe this was a good approach in this case given a) the unknown history of the evidence after collection and prior to laboratory submission, b) the questionable handling of the evidence by Mr. Grant

during his serological testing in 1983, and c) the unknown chain of custody (handling and storage) of the evidence during the period of 1983-2001 (prior to testing at Forensic Science Associates).

5. No sperm were observed on the bloody tissue found on the floor underneath Ms. Plante. In his affidavit (April 3, 2001), Mr. Blake mentions that the shape of this bloodstained tissue is of particular interest "because it is the type of shape that one would expect if this paper towel were lodged between the legs in the crack of the buttocks or vagina". If this paper towel was used in this fashion and the assailant had ejaculated multiple times during a vaginal sexual assault that occurred over a time period of 8 hours, then one might expect to find sperm on this item.

6. In his "Report 2 - February 4, 2002", Mr. Blake outlines the DNA test results from "pooled spermatozoa from swabs, slides, and pubic hairs". Many of the "pooled" samples that were used to obtain these DNA results were of "unspecified" or unknown origin. From the available case information, I could not determine the true source of these "unspecified" samples. Furthermore, I do not believe that it was an acceptable procedure to "pool" or mix together previously tested samples with other samples of unknown origin. These "unspecified" or unknown samples could have come directly from Mr. LaGuer during improper handling and testing of his underwear and/or these "unspecified" samples could have come in contact with items known to have originated from Mr. LaGuer. Because of these issues, the DNA testing and results in this case cannot be relied upon and therefore, should not be used to draw any final conclusions.

7. In his "Report 3 - March 21, 2002", Mr. Blake states on page 9, #8 that "in our previous work a trace level of DNA from a male was detected in Tissue D areas D, E, F, G, and L. It is likely that this individual possesses vWA type 17, 18". Since the raw data from the DNA testing was not available for review, I must assume that the 17 allele and 18 allele detected at the vWA locus was indeed from a male. I agree with Mr. Blake when he states on page 9, #9 that "the cellular source of this trace level of male DNA is unknown". However, to further state in his report that "these findings fail to support Benjamin LaGuer's claim of factual innocence in the rape and murder of Lenice Plante" is, in my opinion, in violation of his duty as a forensic expert to be objective and unbiased.

8. After pooling all of the samples together, Mr. Blake determined the quantity of DNA recovered from this "pool" of samples to be "<0.03ng/ul". This low-level amount of DNA is not only inconsistent with an 8hr sexual assault where the rape kit was collected very soon after the incident but this low concentration of DNA could be consistent with contamination.

#### **IV. FINAL COMMENTS**

1. According to the Investigative Report dated 07/14/83, Ms. Plante stated that the assailant told her during the incident that he was 30 years old and from Fitchburg. Whether or not the assailant lied cannot be determined, but Mr. LaGuer was 20 years old at the time and to my knowledge, he was not from Fitchburg. It would have been worthwhile to follow-up on the information told to Ms. Plante by the assailant, possibly cross-referencing all of the investigative information in this case with other past cases in Fitchburg and the surrounding areas that had similar MO and victimology. Also, it would have been beneficial to compare the fingerprint evidence recovered from the telephone used to bind Ms. Plante to the fingerprints of known offenders (previously arrested and/or convicted) as well as to other fingerprint evidence from other cases for possible linkage. This is especially important since the foreign fingerprint at the scene did not match Mr. LaGuer.

2. According to the case information, there was a sock recovered from the crime scene that was used to gag Ms. Plante. From my knowledge, this sock has never been linked to Mr. LaGuer.

3. Ms. Plante indicated that the assailant had a knife. The first officer at the scene observed a knife on the night table. I am not sure if this knife was ever collected as evidence. If so, I am unaware of any forensic testing performed on this knife, which would have been beneficial to the investigation as the assailant may have left fingerprints and/or biological material (particularly skin cells) on the knife handle.

4. Since the case records indicate that the assailant entered the scene by forced entry, it would have been important to process the scene door and door panel for toolmark, fingerprint, and biological evidence. Any toolmark evidence could have indicated what device(s) was used to forcefully open the door, which could be useful investigative information to link someone to the crime if the device, for example, was ever recovered directly from a suspect or linked to a suspect through other evidence (fingerprints, DNA, etc.)

5. According to the investigation report dated 07/14/83, Ms. Plante stated that the assailant removed two rings from her left hand and that her handbag was missing from the scene. I am not sure if any follow-up was done on these missing items, but based on the available case information, I do not believe these stolen items were ever recovered from Mr. LaGuer or from his apartment.

6. From the case information, it is known that Det. Carignan destroyed his original contemporaneous notes from the investigation and substituted them with reports he wrote after Mr. LaGuer was arrested. It is not an acceptable procedure to discard or destroy original notes generated during a criminal investigation. Because he destroyed his original notes, Det. Carignan had to rely on his memory to write his reports, which is not acceptable as crucial details and facts could be excluded from his report and incorrect information



included. In addition, original notes allow other individuals who were not at the scene to understand exactly what Det. Carignan observed, heard, witnessed, etc. while he was at the scene and while he was talking to various people (Ms. Plante, neighbors, etc.)

7. No spermatozoa, seminal fluid, or male skin cells were found on either the vaginal or rectal swabs/smears or the underwear recovered from Ms. Plante. If seminal fluid was found on her pubic hairs, then one would expect to find seminal fluid on other items of evidence collected from Ms. Plante including her vaginal swabs, rectal swabs, underwear, etc., especially given that the evidence and rape kit were collected very quickly after Ms. Plante was raped repeatedly over a period of eight hours.

8. The laboratory results from the serology testing in 1983 and the subsequent DNA testing in 2001-2002 are unreliable given a) the unknown history and handling of Mr. LaGuer's underwear due to improper documentation of the collection, packaging, handling, and storage of this item from 1983-2001, b) the shortcomings of Mr. Grant's handling, examination, and analysis of the physical evidence, c) Mr. Grant's reporting and testifying to incorrect bloodtyping results, AND d) the blind testing and pooling of "unspecified" samples by Mr. Blake at Forensic Science Associates.

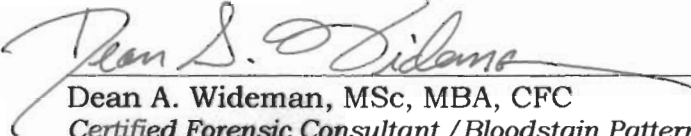
9. The DNA testing performed in this case is a very sensitive method utilizing PCR technology which can detect very small quantities of DNA. This is advantageous in forensic casework, where it is very common to recover only a small amount of biological material. However, the sensitivity of this DNA technology can also be problematic in that it is quite easy to detect contamination as illustrated in the testing conducted by Forensic Science Associates where one of their laboratory analyst's own DNA was detected in two of the "unspecified" samples in this case. Therefore, given a) the improper evidence handling, chain of custody issues, and poor laboratory technique of Mr. Grant who handled and tested evidence items from different sources on the same day, at the same time, and in the same space AND b) the very low-level amount of male DNA recovered from "pooling" ALL of the samples, including those of unknown origin, it is possible that the male DNA detected in these samples are the result of contamination and again, should not be relied upon.

10. It is unfortunate that Mr. Blake was unaware of the problems with the chain of custody and evidence handling in this case during his "blind" testing. If he had known about these problems from his own inquiry and reviewing of the case records, Mr. Blake could have informed his client that the DNA test results might have been influenced by the questionable history and prior improper handling of the evidence.



11. Based on the available case information, there is no evidence linking Mr. LaGuer to: a) the sock found at the crime scene, b) the blood collected at the crime scene, c) the fingerprint evidence on the telephone used to bind Ms. Plante, d) the knife observed at the crime scene, or e) the items stolen from Ms. Plante. In addition, there was no evidence found on Mr. LaGuer or in his apartment that originated from Ms. Plante or from her apartment (i.e., hairs, fibers, biological material, etc.)

In summary, there are numerous deficiencies in this case relating to the criminal investigation, evidence collection, evidence handling, evidence storage, chain of custody, serology testing, and DNA testing. The types of errors and mistakes in this case are the result of individuals not adhering to the accepted standards and practices of criminal investigation and forensic laboratory testing.

  
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