

#5

4-17-15  
1 30 2 29

1 JEFFREY F. ROSEN  
District Attorney  
2 DAVID R. BOYD  
Deputy District Attorney  
3 California State Bar No. 184614  
County Government Center, West Wing  
4 70 West Hedding Street  
San Jose, California 95110  
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ENDORSED  
FILED

2015 NOV -9 2:07

DEPARTMENT OF THE CLERK OF THE SUPERIOR COURT  
SANTA CLARA COUNTY  
SANTA CLARA, CALIFORNIA

6 Attorneys for Plaintiff

DIANA GUTIERREZ

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SANTA CLARA

11 THE PEOPLE OF THE STATE )  
OF CALIFORNIA, )

Criminal Case No. 213515

12 Plaintiff, )

13 v. )

DECLARATION IN SUPPORT  
RESPONSE AND OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS THE INDICTMENT

14 ANTOLIN GARCIA-TORRES, )

15 Defendant. )  
16

18 I, David R. Boyd, do hereby declare that:

19 1. I am the assigned Deputy District Attorney to the above-  
20 referenced case.  
21

22 **PENAL CODE SECTION 939.71 LETTER**

23 2. On January 28, 2014, the People sent defense counsel Traci  
24 Owens a letter requesting her to provide any potentially  
25 exculpatory evidence that they would like offered to the  
26 grand jury under Penal Code section 939.71.

27 3. On January 31, 2014, Ms. Owens responded by email with an  
28 itemized list of seventeen items of allegedly exculpatory

1 evidence to be evaluated pursuant to the People's duties  
2 under PC §939.71. That list and all subsequent follow up did  
3 not include the evidence described in the Motion to Dismiss  
4 the Indictment filed September 2, 2015.

5 **HANDWRITTEN NOTES**

- 6 4. Bates page 1146 has the following relevant passage:

7 On Thursday, March 22nd, 2012, [Assistant  
8 Principal Kevin Miller] telephoned my partner  
9 and me. [Assistant Principal Kevin Miller]  
10 wanted to turn in one of [Sierra's] notebooks  
11 from her school locker. Apparently, some  
12 students had gained access to [Sierra's]  
13 Spanish notebook and started writing things  
14 in it. Some of the pages [sic] had been  
15 torn out, while another entry state, "If your  
16 reading this I will be in San Francisco on  
17 03/16/12."

18 The actual note reads a bit differently. [See Def. Exh. A.]

19 The witness who provided the information and the Spanish  
20 workbook to Sgt. Carrasco was identified as Kevin Miller, an  
21 Assistant Principal at Sobrato High School.

- 22 5. BATES page 1146 was included in discovery provided to the  
23 defense on or about July 9, 2012.

- 24 6. BATES pages 1145-1147 describe that the notebook [E/I  
25 #171465] was given to Detective Carrasco by Rochelle G. on  
26 Monday, March 19, 2012, not that the police collected it from  
27 Sierra's locker.

28 **FALSE SIGHTINGS OF SIERRA**

- 1 7. BATES 1353-1355 is a police report reflecting a follow up  
2 interview with Claire N. That report does not corroborate  
3 the reference that Sierra was going to Fremont during the  
4 upcoming weekend. Additionally, a review of the recording of

1 the interview [SO DM-439] does not reveal Claire N. saying  
2 the same. A review of the text message exchanges [SO DM-419]  
3 between Claire N.'s and Sierra's cell phones also do not  
4 support Sierra's planning to travel to Fremont that weekend  
5 and the cell phone records [SO DM-419] for Sierra do not  
6 reveal a telephone call between the two on March 15, 2012.  
7 8. In the recorded follow up interview, when discussing whether  
8 Sierra would run away vs. being abducted, Claire N. did say  
9 that the "cell phone thing freaked me out." She was  
10 apparently referring to the finding of Sierra's phone in the  
11 open field.

12  
13 **DOG SCENT EVIDENCE**

14 9. SO DM-376 includes files of GPS tracks of searches along with  
15 notes of investigators. The notes reveal two locations where  
16 the dog lost the scent of Sierra, one on Paquita Espana as  
17 noted by the defense and another on Dougherty.  
18 10. Attached is what Kristine Black would have testified to  
19 regarding the factors that go into drawing any conclusions  
20 with respect to canine tracking evidence. Her CV is also  
21 attached with personal information redacted. See attachments  
22 1 and 2.

23  
24 **DNA STATISTICS**

25 11. The defense has been provided with these notes several times,  
26 including as early as on or about August 20, 2012.  
27  
28

1 I declare under penalty of perjury under the laws of the  
2 State of California that the foregoing is true and correct to the  
3 best of my knowledge.

4  
5 Dated: November 9, 2015

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8 DAVID R. BOYD  
9 Deputy District Attorney  
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# ATTACHMENT 1

# Santa Clara County Sheriff SEARCH AND RESCUE TEAM

55 West Younger Avenue, San Jose, CA 95110



**Reference: Environmental factors that affect a trailing canine's ability to follow a trail.**

"TRAILING DOG: is generally used to identify one particular individual's scent from any other person. Trailing is the following of an individual scent trail from a particular person. This dog is generally worked on lead, requires a scent article to begin searching, will follow the trail of the selected individual, and will identify the subject using an alert readable by the handler at the end unless the individual left the area. Trailing dogs are more appropriate for SAR missions than tracking dogs." *California Governor's Office of Emergency Services Law Enforcement Branch Search and Rescue Mutual Aid - Canine Guidelines (page 4).*

Factors that can affect a trailing dog's outcome include, but are not limited to, elapsed time from when the person went missing to the time the trailing dog arrived on scene, as well as the weather, human contamination, and the availability of a scent article.

## Elapsed Time

As scent ages, every variable affecting that scent also changes. The scent may not last more than 1-2 hours, or in some cases it could last up to 24 hours or longer. The wide range in scent stability is due to the changing environment. As canine trailing handlers, we have discovered that we cannot predict how long scent will last in every given scenario, but what we can do is take into consideration both the past environmental conditions and the variables present at the time we are involved.

## Weather

### *Temperature*

Air temperature is vital to the scent being available for the dog to follow. Scent is biological and temperature can either break down the scent and destroy all traces of it, or preserve it. Temperatures above freezing and below 90 degrees, with moderate to high humidity, are the best range in which to preserve the available scent. After nightfall is the optimal time to search because the lower temperatures and higher humidity keep the scent closer to the ground.

### *Wind*

Wind has a major effect on scent. A strong wind can blow scent a long way from where it originated. Environmental factors influencing wind's effect on holding scent close to

the trail include the surface upon which the person walked and natural boundaries, including shrubs, trees and green belts. Man-made barriers such as buildings and sound walls can contain the scent closer to where a person walked as well. In some cases, scent can blow far enough away so that a canine cannot reacquire the trail it was originally following.

#### Moisture

Water enhances scent by fostering an environment in which the bacteria that compose the scent particles can expand. However, heavy rain may wash the scent away from its original path, whereas a light rain can enhance the scent close to the ground where the person walked.

#### Humans

Human factors which affect the stability of scent include foot traffic around the area where the missing person was last seen. Family members, law enforcement personnel, and neighbors scouring the area looking for the missing person typically leave numerous tracks. These tracks make it difficult for the canine to sort out the exit trails. Heavily traveled roads are blanketed by automobile exhaust which adversely affects the scenting ability of canines. In some cases, those odors can totally block the dog's ability to scent for a short period of time.

#### Scent Articles

Collecting and preserving scent articles from the missing person's belongings is the handler's responsibility. A scent article has a high chance of becoming contaminated by well-intentioned parties, including family members, when collected by someone other than a dog handler. Ideally, scent articles should be stored in a heavy-duty, zip-lock bag or glass container. Brown bags, which are used to collect evidence, are a poor choice because they are breathable and therefore subject to contamination. Items used only by the missing person make the best scent articles. Examples include underwear, tooth brushes, eye glasses, and insoles of shoes. However, any of these items could become contaminated by family members due to their living in close proximity to the missing person. The dog handler interviews the family members to help identify the scent articles least likely to be contaminated.

Certified canine trailing teams spend hundreds of hours training for the many different environmental scenarios they may encounter on deployments. No two searches are ever the same. Our goal is to find the missing person. However, there are times when a canine loses the trail due to environmental factors, or perhaps simply because the missing person was picked up by a vehicle from the location where the trail appears to have suddenly ended.

*Kristine Black 11/03/15*

Kristine Black  
Santa Clara County Sheriff's Office Search and Rescue  
K9 Handler and Administration Officer

**Resources:**

**Schettler, Jeff. K-9 Trailing: The Straightest Path. Crawford, CO: Alpine Publications, 2011. Print.**

**Syrotack, William G. Scent and the Scenting Dog. Mechanicsburg, PA: Barkleigh Publications, 2000. Print.**



# ATTACHMENT 2

## Kristine Patricia Black

### Curriculum Vitae

Phone: [REDACTED] • Email: [REDACTED]

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#### Canine Handler:

Kris has been involved with Santa Clara County Office of the Sheriff Search and Rescue and Canine Specialized Search Team for the past 15 years. She has contributed to many local searches and mutual aid requests with her canines Klaus (deceased), Osara (deceased) and Diesel through the California Office of Emergency Services (CalOES), Law Enforcement Branch. She presently is the Administration Officer for the Santa Clara County Sheriff Search and Rescue team and the Canine Specialized Search Team (CSST) in the position of Law Enforcement Liaison to the Sheriff's Office. Additionally, she and her canine partner, Osara, worked archeological projects with the Institute for Canine Forensics (ICF), utilizing specialized canines to detect historic and prehistoric burials.

#### Detection Canine Certifications:

- 2012 – Present: **K9 Diesel** – California Rescue Dog Association-certified Wilderness Trailing, certified to CalOES Law Enforcement Branch guidelines.
- 2006 – August 2015: **K9 Osara** (deceased) - Human Remains Detection and Historical Human Remains Detection, annual recertification, certified to CalOES Law Enforcement Branch guidelines and Institute of K9 Forensics.
- 2003 - 2010: **K9 Klaus** (deceased) - Wilderness Live Find, Trailing and Cadaver, certified to CalOES Law Enforcement Branch guidelines through California Rescue Dog Association (CARDA).

#### DETECTION CANINE TRAINER/HANDLER EXPERIENCE

Thirteen years of experience in training and handling detection canines.

2002 to Present:

- Trained, certified and handled canines in the fields of wilderness live-find, human remains and disaster (cadaver) and trailing under the guidelines of the CalOES Law Enforcement Branch for Santa Clara County Sheriff's Office, CARDA, CSST and the ICF
- Created and implemented Santa Clara County Sheriff's Search and Rescue Academy, which is accredited through West Valley College
- Developed and maintained excellent working relationships with federal, state, regional and local fire and law enforcement agencies in the course of detection canine training and handling duties
- Serve as a CARDA and CSST-rostered evaluator for trailing, live-find, human remains and cadaver detection canines
- Served on the CARDA Board of Directors (2011-2013)
- Served as the CARDA Evaluator Chairperson (2009-2011)
- Chaired the committee for the creation and implementation of the qualification program for canine evaluators for CARDA
- Deployed on approximately 200-plus searches as a canine handler both in Trailing and Cadaver

#### Notable Multi-agency Responses:

##### K9 Osara:

- San Mateo County Sheriff - located human remains (2015)
- Oso, WA Mudslide (2014)
- San Joaquin County SO, Shermantine-Herzog case, located buried body and scattered remains (2012)
- Sierra Lamar search (2012)
- San Bruno CA Explosion (2011)

- Santa Cruz PD – located buried human remains (2010)
- Modesto PD – located buried human remains (2009)
- Sandra Cantu, Tracy, CA (2009)
- Hassani Campbell, Oakland, CA (2009)
- Garrido Search (Jaycoo Dugard), Antioch, CA (2009)
- Janine Harms, Los Gatos, CA (2009)
- Tulare County SO, located blood evidence (2008)
- Santa Clara County SO, located scattered human remains (2007)
- Nina Riesner, Oakland, CA (2006)

#### **K9 Klaus**

- San Jose PD, assisted in locating missing 13-year old (alive) (2011)
- Santa Clara County SO, located body of suicide victim (2011)
- San Jose PD, found missing 4-year old (alive) (2010)
- Santa Cruz PD, scattered human remains (2009)
- Madera County SO, blood evidence (2006)

#### **PROFESSIONAL AFFILIATIONS**

- Santa Clara County Sheriff's Search and Rescue (SCCSSAR) [www.sccssar.org](http://www.sccssar.org)
- Canine Specialized Search Team (CSST) [www.CSST.org](http://www.CSST.org)
- Institute for Canine Forensics (ICF) [www.K9Forensic.org](http://www.K9Forensic.org)
- California Rescue Dog Association (CARDA) [www.carda.org](http://www.carda.org)
- Santa Clara County Police Officer's Association (SCCPOA) [www.sccpoa.org](http://www.sccpoa.org)
- California State Coroner Association (former) [www.coroners.org](http://www.coroners.org)
- National Association of Search and Rescue (former) [www.nasar.org](http://www.nasar.org)

#### **SPECIAL AWARDS**

- State of California Office of Emergency Services Letter of Commendation (Oso, WA Mudslide - 2014)
- San Joaquin County Sheriff, Letter of Commendation (Shermanline-Hertzog case - 2013)
- Sony Corporation – Samurai Society, recipient of the prestigious Samurai Award (the highest level of achievement for overall performance - 1998)

#### **Letters of Appreciation and Acknowledgement:**

- Chief Dennis Graham, of Milpitas Police Department
- Acting Police Chief, Charlotta Pang, of Milpitas Police Department
- Sergeant David Cobble, Santa Clara County Sheriffs' Office
- Santa Clara County, Deputy District Attorney, James Gibbons Shapiro
- Lieutenant Escalante, Santa Cruz Police Department
- Nancy Pyle, City Council Member District 10 San Jose California
- Sheriff John Anderson, Madera County Sheriff's Department
- Dr. Lorna Pierce, Santa Clara University, Anthropology Program
- Chief Don Johnson, Sunnyvale Department of Safety
- Sheriff Plummer, Alameda County Sheriff

#### **EDUCATION, CERTIFICATION, LICENSES AND TRAINING**

- National Incident Management System (NIMS) Incident Command Systems 100, 200, 300, 400, 700 and 800

- Canine Trailing Academy LLC Basic Urban Trailing K9 Course 4 days (April 2014, March 2015, April 2015)
- Forensic Science Administration of Justice at West Valley College, 56 hours (2013)
- American Man Trailing Police and Working Dog Association 3-day Clinic (2013)
- Georgia K9 National Training Center LLC 5-day Trailing Clinic (2011, 2012)
- Canine Trailing Academy LLC 5-day Basic K9 Trailing Clinic (2013, 2014)
- San Luis Obispo SO, Locating the Dead (2009, 2010, 2011, 2012, 2013, 2014)
- K9 - Urban Trailing Class, K9 Specialty Search Associates (2009)
- American Red Cross CPR for the Professional (2004-present)
- American Red Cross Medical First Responder (2004-present)
- Hazardous Materials Response - Awareness Level (2009, 2015)
- Search Tracking, Police Officer's Standard Training (POST) Certified, College of San Mateo, 16 hours (2009)
- Inland Search and Rescue Planning, United States Air Force National Search and Rescue, 40 hours (2008)
- Canine Management Program, California POST, 24 hours (2008)
- Human Remains Detection, Institute for Canine Forensics, 25 hours (2006)
- Missing Children and Searching for Victims of a Sexual Assault and Homicide, Office of Emergency Services, Michael St John (2005)
- Canine Legal Updates and Seminar, Terry Fleck (2005)
- Direction and Control of the Search Function, California POST, Office of Emergency Services Law Enforcement Branch (2004)
- Emergency Response to Terrorism (2002)
- Sheriff's Mounted Patrol, County of Sacramento, POST-certified, 40 hours, (2002)
- Laws of Arrest Module, California POST PC832, Cabrillo College, 40 hours (2002)
- Fire Arms Module, California POST PC832, Cabrillo College, 16 hours (2002)
- Fundamentals of Search and Rescue, Santa Clara County Office of the Sheriff (2001)

### INSTRUCTOR

- Search and Rescue Academy, Santa Clara County Sheriff's Office (West Valley College accredited)
- Human Remains Detection by Canines, Institute for Canine Forensics
- Scent Theory, Institute for Canine Forensics, Canine Specialized Search Team
- Probability of Detection, Institute for Canine Forensics, Canine Specialized Search Team
- Crime Scene Preservation, Institute for Canine Forensics, Canine Specialized Search Team
- Training the Human Remains Detection K9 SAREX (2012, 2013, 2015)

### WORK EXPERIENCE

**Job Title: Administration Officer, Canine Handler/Trainer – Unpaid Professional**  
*Santa Clara County, CA*

In 2000 I decided to continue working on a part-time basis so I could become active in local search and rescue as a detection canine trainer/handler. This evolved into an unpaid professional position with the Santa Clara County Sheriff's Office, Special Operations Unit as the Administrative Officer and Canine Liaison/Handler. My responsibilities include: search management, dispatching detection canine teams, evaluating and approving participating detection canine teams, interfacing with the search and rescue team management, developing the curriculum and teaching for the Search and Rescue Academy, track and maintain certifications and attendance records, interface with outside law enforcement agencies, and coordinate mutual aid detection canine resources for use outside Santa Clara County.

**Job Title: Teacher's Aide, Middle School Special Education (part-time)**  
*Saratoga Unified School District: Saratoga, CA*

Assist in the writing of daily lesson plans, presenting lessons and collaborating with teachers in remedial reading and math intervention. A key element in my daily duties is the management of behavioral issues and implementation of modification techniques. Perform individual testing of special education students. Responsibilities include grading and editing written reports, teaching basic computer skills.

Additional responsibilities include emergency response team duties. This includes planning, monthly drills, clearing the campus buildings, organizing search and rescue operations.

**Job Title: Senior Account Manager**

Sony USA: San Jose, CA

Senior Account Manager, Professional Video Products Division in the Broadcast and Business Solutions Company. Operated from my home-office, focusing on assigned accounts located in Northern California, Oregon, Washington, Idaho, Montana, Wyoming, Utah and Alaska; including quarterly visits to headquarters for these accounts. Managed account relationships. Achieved business growth through successful competitive selling, and diversified product line sales. Successfully met business objectives and continued to build the success of our channel partners. Responsibilities included extensive report writing on market conditions. Provided technical product information compiled and performed competitive assessments and comparisons, assisted customers with systems solutions, interfaced with end-users, conducted product demonstrations, forecasted future requirements, performed sales analysis and executed the Product Group's strategic sales plan. In addition, I was the liaison between our support staff in the U.S. and our colleagues in Japan.

**REFERENCES:**

**Dr. Lorna Pierce**

Forensic Anthropologist, Santa Clara University

[REDACTED]  
[REDACTED]

**Sgt. Brett Moore, Canine Program and Mutual Aid Coordinator**

Santa Clara County Sheriff's Office,

[REDACTED]  
[REDACTED]

**Dr. Kathryn Stewart, Clinical Psychologist and K9 Handler**

California Rescue Dog Association

[REDACTED]  
[REDACTED]

**Lynne Engelbert, Canine Search Specialist**

California Task Force 3, Canine Specialized Search Team

[REDACTED]  
[REDACTED]

**Mary E. Cabik, Ph.D., Associate Research Professor**

Desert Research Institute, Tortoise K9 Detection Program

[REDACTED]  
[REDACTED]

ENDORSED  
FILED

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PROOF OF SERVICE

Deputy Sheriff, Santa Clara Superior Court  
County of Santa Clara, California

STATE OF CALIFORNIA	)	People v. ANTOLIN GARCIA TORRES	Plaintiff
	)	ss.	
COUNTY OF SANTA CLARA	)	Docket No. 213515	DIANA GUTIERREZ

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years, and not a party to the above-entitled action. My business address is: Office of the District Attorney, 70 West Hedding Street, West Wing, San Jose, CA 95110

On November 9, 2015, I served the following documents upon the interested parties in this action by the method(s) indicated below:

- Order Permitting Oversize Brief [SCC Local Rule of Court 5.B.11.e]**
- People's Response and Opposition to Defendant's Motion to Dismiss the Indictment**
- Declaration in Support Response and Opposition to Defendant's Motion to Dismiss the Indictment**
- Attachments 1 and 2**
- Sealing Order**
- Declaration in Support of Sealing Order**

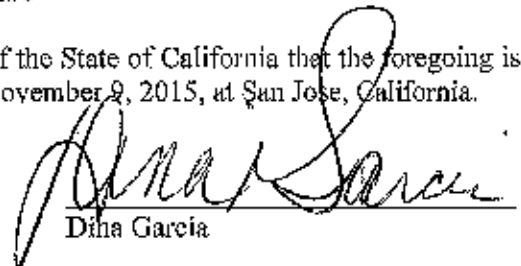
BY FACSIMILE TRANSMISSION: by faxing a true copy thereof to the recipient at the facsimile number indicated;

BY COUNTY PONY MAIL: by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

**Al Lopez**  
**Alternate Defenders Office**  
**701 Miller Street**  
**San Jose, CA 95110**

**Brian Matthews**  
**Alternate Defenders Office**  
**701 Miller Street**  
**San Jose, CA 95110**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 9, 2015, at San Jose, California.

  
 Diana Garcia