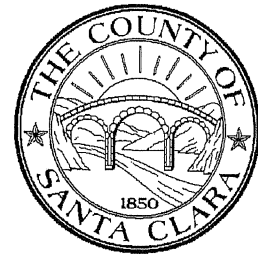


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(ENDORSED)
FILED
MAR 22 2017
Clerk of the Court
Superior Court of CA County of Santa Clara
BY C. COLBENSON DEPUTY



David Epps
Supervising Attorney

March 21, 2017

Honorable Judge Vanessa Zecher
David Boyd, Deputy District Attorney
Department 40

RE: Antolin Garcia-Torres, SCC docket #213515

Dear Judge and Mr. Boyd:

After carefully considering Dr. Justin B. Whittall's report it has become clear that his testimony should be excluded as unreliable, not supported by forensic science, not generally accepted in the scientific community, exceeding the limits of science, improperly assigning a probability or likelihood that the plant matter and debris originated from a particular source. To allow this type of evidence would violate Mr. Garcia-Torres' state and federal constitutional rights under due process, effective assistance of counsel, and right to a fair trial.

Background

A review of Dr. Whittall's CV presents no forensic training or any work in the area of forensic botany. He does teach courses in biology at the college level but has not indicated any specialized expertise in the particular plant matter in this case. The Santa Clara County crime lab sought his expertise as an investigative resource to help identify plant matter that could help them possibly identify areas where Sierra LaMar could have been or where her clothes could have been. These attempts failed but they are attempting to induce these investigative leads as evidence in the case.

Identification of Plant Matter

Dr. Whittall did not examine the plant matter, seeds, wood, flower bud, by an examination, dissection, DNA analysis, nor any scientific method. He was given photos, many were bad quality magnified to unknown degrees, and asked to identify the possible plant matter. In other words, he was asked to guess at what it could be by comparing the images to photos of other known plant matter. When he could not identify the matter, he would email others and ask for their input. Their qualifications and expertise is unknown. Dr. Whittall doesn't state any methodology for his identification, scientific methods applied, nor how he arrived at his conclusions. In fact, Deborah J. Meyers, Senior Seed Botanist, was sent photos as well to make

identifications but rather than guessing she insisted on examining the actual specimens so that she could compare them with real reference samples her lab collected, see attached Exhibit A.

Insect Parts Identification

Similarly to the plant matter, Dr. Whittall attempts to identify insect parts. His qualifications are unknown regarding insect identification and was relying on emailing friends who's qualifications are unknown. He attempts to make identifications on insect parts where he doesn't even know if they really are insect parts. His opinions are pure guesswork and based on looking at photos without any real examination of the debris.

Glass Beads and Soil

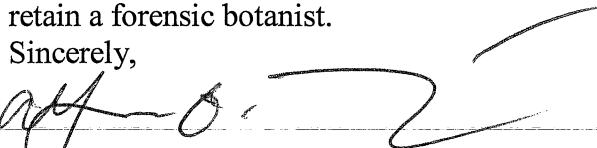
There are no qualifications stated for his expertise in identifying or evaluating road beads or soil. His analysis consist of looking at photos and rendering opinions outside his expertise and where any true expert would never opine without analyzing the material. Looking at photos is not an acceptable manner to render opinions regarding this type of trace material. Nor has he stated any meaningful examination of the beads or soil.

Summary, Conclusion, and Impressions

Although Dr. Whittall's summary, conclusions, and impressions might be helpful to law enforcement as an investigative lead, it has no business in the court room. His opinion that four items from the clothes associated to Ms. LaMar match 100% with items from the car is a reckless opinion not based on science. He states no methodology to make that opinion. Moreover, his opinion that the trace evidence occurred during a singular event is also not based on any studies, training and experience, nor any reliable information that qualifies him to make such a claim.

Dr. Whittall's report was provided a few days ago just before he was due to testify. Defense counsel has already brought a motion to continue addressing the prejudice regarding lack of time to prepare and to refute this proposed unreliable testimony. Defense counsel is seeking that this court conduct a *Kelly/Frye* hearing regarding Dr. Whittall's proposed testimony as it fails to meet any generally accepted guideline established in the scientific community. Even the identification of plant matter requires more than merely looking at a picture and opining that it is a 100% match. Allowing Dr. Whittall to take the stand and guess regarding his identification based on his doctoral degree in evolution runs the risk that the unreliable testimony will be accepted by the jury at face value especially since defense counsel does not have enough time to retain a forensic botanist.

Sincerely,



Alfonso O. Lopez

Deputy Alternate Defender

EXHIBIT A

Melissa Hengoad - RE: more photos of L108B?

From: "Meyer, Deborah@CDFA" <deborah.meyer@cdfa.ca.gov>
To: Melissa Hengoad <MHengoad@crimelab.sccgov.org>
Date: 6/19/2012 11:03 AM
Subject: RE: more photos of L108B?
CC: Justen Whittall <jwhittall@scu.edu>

Hi Melissa,

I've spent considerable time looking for specimens that match your photographs, but can't come up with anything. Sometimes photographs just don't translate well, so if you would like me to continue to work on the identification I will need to see the actual specimens.

Debbie

Deborah J. Meyer
Senior Seed Botanist - Supervisor
California Department of Food & Agriculture
Plant Pest Diagnostics Center
3294 Meadowview Road
Sacramento, CA 95832-1448
916-262-1137 916-262-1190 FAX
deborah.meyer@cdfa.ca.gov

From: Melissa Hengoad [mailto:MHengoad@crimelab.sccgov.org]
Sent: Monday, June 18, 2012 9:42 AM
To: Meyer, Deborah@CDFA
Cc: Justen Whittall
Subject: Re: more photos of L108B?

Hi Debbie;

I'm the Criminalist working with Justen to photo document these "seeds". I apologize for our stereomicroscope camera as it is quite limited on depth of field. I attempted to take numerous shots of the items with various areas in focus.

Attached are the images of L108B-1 and P109C-1 (what you reference as 109C-1). I poked at both L108B-1 and P109C-1 with a needle and they appear to be thick and woody.

Thank you for taking a look at these and please let me know if I can get you more photographs. Myself and the items are in San Jose, but can travel to Sacramento if you think it would be helpful.

Melissa

Communication Log - M120319

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