

TEXAS DEPARTMENT OF PUBLIC SAFETY

5805 N LAMAR BLVD • BOX 4087 • AUSTIN, TEXAS 78773-0001

512/424-2000

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JASON K. PULLIAM

July 19, 2019

Bryce Benjet
Senior Staff Attorney
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013

Dear Mr. Benjet:

I have reviewed your correspondence entitled "Request for Correction, L-268694" dated June 18, 2019 regarding the trace evidence testimony.

After a review of the case records I do not believe that Ms. Musialowski's testimony constitutes professional negligence or professional misconduct and thus do not see a basis for the Crime Lab to report this matter to the Texas Forensic Science Commission pursuant to Article 38.01, Sec. 4, Texas Code of Criminal Procedure.

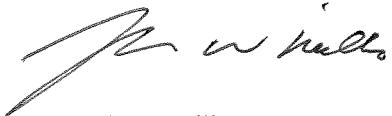
In regards to Issue II (Source Attribution), I disagree with the assertion that she directly associated the fibers in this case with any particular piece of evidence. In fact, there's one instance where she corrects the attorney who used the term "cross-matching" to indicate the correct terminology of "similar." The word transference is used quite a bit in both direct and cross examinations. This is not a trace evidence term that was added by our Criminalist. Ms. Musialowski corrects definitive statements from the attorney and during both direct and cross examination there is a very clear discussion regarding what the limitations of the statement "similar to" are and that she was only comparing class characteristics that can be found in a group of items during her testimony. Further, the court display was intended to supplement testimony provided by Ms. Musialowski. It does not make any commentary regarding source attribution of any of the hair or fiber evidence.

In regards to Issue III (Unique Physical Match), the terms "unique" and "to the exclusion of others" were common language throughout the forensic community, at the time, in regards to physical matches and footwear/tire comparisons when accidental characteristics were located. This was accepted in reports and in testimony at the time this work was completed in our laboratory. Today we would report that the two pieces were once joined, but would not include the statement "to the exclusion of all others." This is the highest level of association we make and is listed in the Trace Categories of Association in the report addendum. She did not err in her reporting or testimony regarding this topic but if she were to report out this comparison today, the terminology would be different.

Issue III also questions her ability to assess a physical match on pantyhose given that they are an elastic fabric. An examiner must always assess the characteristics that are present to determine if there is sufficient detail to make a comparison and association. You indicate that a broken piece of pottery with a straight edge is a better material for doing a jigsaw comparison, but if there are not features along the edge, no curve, no striations, and/or only a small area, then this may not contain sufficient information for comparison. The pantyhose cannot be dismissed automatically as not being a suitable material for comparison and there is not anything scientifically invalid about her attempt at the comparison or the comparison itself.

Your letter indicates that you have sent your Request for Correction to the Texas Forensic Science Commission. We would fully cooperate with the Commission or the courts regarding any hearings or reviews they may choose to conduct.

Sincerely,



Brady W. Mills
Crime Laboratory Director
Crime Laboratory Service
Law Enforcement Service Division

cc: Ms. Lynn Garcia, Texas Forensic Science Commission
The Honorable Brett W. Lingon, Montgomery County District Attorney

BWM

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July 25, 2019

Bryce Benjet
Senior Staff Attorney
Innocence Project
40 Worth Street, Suite 701
New York, NY 10013

Dear Mr. Benjet:

I have reviewed your correspondence entitled "Request for Correction, L-268694" dated October 25, 2018. I do not believe that Ms. Carradine's testimony constitutes professional negligence or professional misconduct and thus do not see a basis for the Crime Lab to report this matter to the Texas Forensic Science Commission pursuant to Article 38.01, Sec. 4, Texas Code of Criminal Procedure. The issues raised in your letter have been litigated in this case.

Your letter indicates that you have sent your Request for Correction to the Texas Forensic Science Commission. We would fully cooperate with the Commission or the courts regarding any hearings or reviews they may choose to conduct.

Sincerely,

Brady W. Mills
Crime Laboratory Director
Crime Laboratory Service

cc: Ms. Lynn Garcia, Texas Forensic Science Commission
The Honorable Brett W. Lingon, Montgomery County District Attorney

BWM

MONTGOMERY COUNTY SHERIFF'S DEPARTMENT

FOLLOWUP REPORT

DATE: 02/11/99

TIME: 09:45

CASE NO: 98A017441/58

CAD NATURE:

REPORTING OFFICER:

UNIT:

SYNOPSIS:

PROCESSED: BY:

ADMINISTRATION

PHOTOS:

PRINTS:

CLR. OFC:
ROUTE:
CLEARANCE:
SUPERVISOR:
APPROVED BY:
ATTACHMENTS:

SAO:

#:

DATE:

EXCEPTION:

DIV:

#:

#:

NARRATIVE

98A017441/58

REPORT BY B.W. EMMONS

SUBJECT: RECOVERY OF BODY

ON 1-2-99, I, CRIME SCENE INVESTIGATOR B.W. EMMONS, MCSO UNIT 6504, RECEIVED A CALL AT HOME AT APPROXIMATELY 1015 HOURS FROM SGT. P. FRANKHouser THAT A BODY MATCHING THE DESCRIPTION OF MELISSA TROTTER HAD BEEN FOUND IN THE WOODS IN NORTH MONTGOMERY COUNTY, OFF FM 1375 AND FOREST SERVICE ROAD 204-A. I RESPONDED TO THE SCENE AND ARRIVED ON LOCATION AT APPROXIMATELY 1115 HOURS.

NUMEROUS OFFICERS WERE AT THE SCENE ON MY ARRIVAL. SEE ORGINAL REPORT FOR DETAILS.

CRIME SCENE PERSONNEL AT THE SCENE;

SGT. P. FRANKHouser, MCSO UNIT 650

CSI I. CEGIELSKI, MCSO UNIT 6501

CSI D. LAFFERTY, MCSO UNIT 6505

L.T. D. NORRIS, MCSO UNIT 51, WAS ON THE SCENE WHEN I ARRIVED AND STATED THAT THE BODY APPEARED TO BE THAT OF MELISSA TROTTER; THAT THE BODY WAS FOUND BY CITIZENS LOOKING FOR TWO GUNS AFTER AN ATTEMPTED SUICIDE OF A FAMILY MEMBER. L.T. NORRIS STATED THAT GAME WARDENS RELATED THAT THERE HAD BEEN NUMEROUS DEER AND DUCK HUNTERS IN THE AREA IN THE LAST FEW DAYS AND THAT THREE DEER HAD BEEN SHOT AND CLEANED IN THE AREA NEAR WHERE THE BODY WAS FOUND. THE AREA WAS SECURED WITH CRIME SCENE BARRIER TAPE ACROSS FS ROAD 204-A WHEN I ARRIVED.

SCENE DESCRIPTION:

FS (FIRE SERVICE) 204-A IS AN IMPROVED DIRT ROAD THAT RUNS IN AN EASTERLY DIRECTION OFF FS ROAD 204. FS 204 IS AN IMPROVED DIRT ROAD THAT RUNS IN A

C... 8/25

MONTGOMERY COUNTY SHERIFF'S DEPARTMENT

98A017441/58

SOUTHERLY DIRECTION OFF FM 1375.

TRAVELED EAST TO THE SCENE:

1.4 MILES NORTH ON INTERSTATE 45 FROM LOOP 336 TO FM 1375

9.5 MILES WEST ON FM 1375 FROM INTERSTATE 45

11.5 MILES SOUTH ON FS 204 TO FS 204-A

2.2 MILES EAST ON FS 204-A

THE BODY WAS LOCATED IN THE WOODS 115' DIRECTLY SOUTH (190 DEGREES) FROM FS 204-A. KEY MAP 72-T.

AN UNIMPROVED DIRT ROAD USED BY HUNTERS WAS ON THE WEST SIDE OF THE AREA WHERE THE BODY WAS FOUND. THE BODY WAS LOCATED 77' EAST OF THIS ROAD. BOTH THIS UNIMPROVED DIRT ROAD AND FS 204-A DEAD END AT LAKE CONROE. SEE DIAGRAM AND MAPS FOR DETAILS OF THE LOCATION.

I NOTED NUMEROUS SIGNS OF HUNTERS IN THE AREA, SUCH AS FIRED SHOTGUN SHELLS AND OTHER TYPES OF FIRED CASINGS AS WELL AS THE REMAINS OF DEER HIDES.

THE BODY WAS LYING FACE UP IN THE BRUSH. HER HEAD WAS TOWARD THE NORTH AND HER FEET TOWARD THE SOUTH. I COULD NOT SEE THE BODY FROM THE UNIMPROVED DIRT ROAD. THERE WERE DEAD TREES AND BRUSH THAT KEEP IT CONCEALED UNTIL I WALKED UP TO WITHIN A FEW FEET OF THE LOCATION.

THE VICTIM WAS FULLY DRESSED IN BLUE JEANS, BLACK COLORED SHIRT, GREEN COLORED SWEATER, WHITE COLORED BRA, RED COLORED PANTIES AND WHITE SOCKS. SHE HAD A SHOE ON HER LEFT FOOT. THE RIGHT SHOE WAS ON THE GROUND NEAR HER FEET.

HER RIGHT ARM WAS ABOVE HER HEAD. HER LEFT ARM WAS ALONG HER LEFT SIDE. THE SHIRT AND SWEATER WERE PULLED ABOVE HER BRA, CONSISTENT WITH BEING DRUG BY SOMEONE HOLDING HER AROUND THE CHEST AREA. HER BLUE JEANS HAD A DOWNWARD RIP/TEAR AT THE RIGHT POCKET AREA CONSISTENT WITH DRAGGING THE BODY FROM THE ST AREA.

DECOMPOSITION APPEARED TO MINIMAL. THERE WAS NO NOTICEABLE ODOR FROM THE BODY. THE TEMPERATURE WAS JUST ABOVE FREEZING AT THIS TIME AND HAD BEEN BELOW FREEZING.

THE FRONT AND RIGHT PORTION OF HER FACE WAS PARTIALLY SKELETONIZED FROM WHAT APPEARED TO BE ANIMAL ACTIVITY. NO OTHER AREA APPEARED TO BE DAMAGED BY ANIMALS OR HAD ANY VISIBLE WOUNDS.

THERE WAS NO APPARENT SWELLING OR DISTORTION OF THE BODY. THE ONLY INSECT ACTIVITY I NOTED WAS AROUND THE NECK. MAGGOTS WERE VISIBLE IN THIS AREA AFTER CLOSER INSPECTION.

JUDGE J. KLEIMANN, JP-1, RESPONDED TO THE SCENE AND ORDERED AN AUTOPSY AT THE HARRIS COUNTY MEDICAL EXAMINER.

CASHNER FUNERAL HOME TRANSPORTED THE BODY TO THE HARRIS COUNTY MORGUE. WE TOOK SIX ROLLS OF 24 EXPOSURE 35MM FILM OF THE SCENE AND SEVERAL POLAROIDS. THE NEGATIVES ARE LOGGED UNDER PHOTO LOG NUMBERS 7298 THROUGH 7303. WE CONDUCTED A SEARCH OF THE IMMEDIATE AREA AND FOUND FOUR CIGARETTE BUTTS IN THE AREA NEAR THE BODY. THE CIGARETTE BUTTS WERE COLLECTED AS POSSIBLE EVIDENCE.

I SEARCHED THE AREA AROUND THE BODY WITH A METAL DETECTOR AND RECOVERED A ZIPPER ASSEMBLY WITH A LEATHER PULL ATTACHED, NEAR THE AREA WHERE HER LEFT SHOULDER WAS SITUATED.

LT. NORRIS STATED THAT HE WAS GOING TO SEARCH THE ENTIRE AREA WITH THE HELP OF THE MONTGOMERY SEARCH AND RESCUE TEAM ON 1-3-98.

IT WILL BE NOTED THAT THERE WERE SEVERAL UNCLEAR TIRE IMPRESSIONS ON THE IMPROVED DIRT ROAD IN THE AREA OF WHERE THE BODY WAS FOUND. I PHOTOGRAPHED 10 OF THESE AND TOOK SOIL SAMPLES FROM EACH ONE.

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MONTGOMERY COUNTY SHERIFF'S DEPARTMENT

98A017441/58

WE CLEARED THE SCENE AT APPROXIMATELY 1610 HOURS.

b.w. EMMONS CRIME SCENE INVESTIGATOR

00-1826