



Forensic Investigative Services

R. Robert Tressel

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Jeffrey C. Marshall
Marshall & Smith, P.C.
46 East Philadelphia Street
York, PA 17401

Re: Noel Montalvo

Mr. Marshall,

I have been retained by your office to review and analyze the crime scene and forensic matters pertaining to the deaths of Miriam Asencio and Nelson Logo on 4/19/98 at 233 E. Philadelphia Street, York, Pennsylvania

I have previously issued a Declaration requesting additional materials be provided for review prior to my issuing a report on this case. As of the date of this report the items I have requested have not been provided.

I reserve the right to amend this report should additional materials be made available.

Professional Background

In July of 1973 I joined the Cobb County Police Department as a Uniform Patrol Officer. In October of 1973 I completed Basic Mandate Training at the Georgia Police Academy.

In February of 1975 I was transferred to the Crimes Against Persons Unit, commonly known as the Homicide Unit. This unit is responsible for all death investigations including homicide, suicide, accidental and natural death cases. That unit also worked robberies, rapes and any case involving person to person contact.

I was subsequently promoted to the rank of Detective Sergeant in July of 1978 and assigned to the evening shift as a supervisor in the Crimes Against Persons Unit. At that time I managed one other sergeant and four criminal investigators.

In January of 1985 I transferred to the Cobb County Medical Examiner's Office as a Forensic Investigator. This position represents the Medical Examiner at all death scenes and is responsible for crime scene processing around the body of the deceased, collection of evidence, and documenting the conditions and circumstances under which the body was discovered.

I was promoted to Operations Manager of the Medical Examiner's Office in 1993. This position required overseeing a staff of four investigators, autopsy technicians and support staff. This position also acted as chief investigator for the Medical Examiner.

In December of 1998 I took an early retirement from Cobb County and went into private consulting.

During my employment with Cobb County I received training in the field of death investigation including, but not limited to, crime scene processing, crime scene analysis, blood spatter interpretations, death investigations, and interpreting injuries and their causes. This training was from some of the most respected trainers in the country. I received training at the University of Georgia, the University of Miami in association with the Dade County Medical Examiner's Office, the University of St. Louis School of Medicine in association with the St. Louis Medical Examiner's Office, the National Law Enforcement Institute in Santa Rosa California, and through the FBI Training Center in Quantico Virginia. All total I have over 700 hours of continuing education in the field of death investigations.

During my tenure with the Cobb County Medical Examiner's Office I trained under Dr. Joseph L. Burton, a renowned Forensic Pathologist. I have been involved with all aspects of the death scene evaluation, gathering and documenting forensic evidence, autopsy and autopsy procedures and evaluating these findings in making determinations as to cause and manner of death.

During my career, I have been involved in over 6,000 death investigations and have personally been involved in over 500 homicide investigations. I have testified in seven states (Georgia, Florida, Alabama, North Carolina, Missouri, Kansas and Texas) and in Federal Court as an expert witness in death investigations, crime scene analysis and blood spatter interpretations.

I have investigated well over 100 stabbing cases both as homicides and aggravated assaults.

In April 2011 I was appointed the Chief Criminal Investigator of the Cobb County District Attorney's Office, Marietta, GA. I currently manage 14 criminal investigators.

and am responsible for directing all specially appointed cases and all death penalty cases for the District Attorney's Office.

Crime Scene Investigations

A thorough crime scene investigation is the heart and soul of any criminal investigation.

The physical evidence recovered and documented from any crime scene is the pivotal point of a criminal investigation. The direction the criminal investigation takes is based on what evidence has been recovered and documented, where this evidence is located and how does this evidence assist the Investigator in determining the sequence of events that led to the incident.

Investigation of the crime scene is the only opportunity the Investigator has to preserve, recover and have analyzed these physical clues. Other case information, such as that gathered from Interviews or Witness statements must be carefully evaluated as to their validity based upon the physical evidence obtained from the crime scene. Details of the crime scene initially thought to be irrelevant, may become crucial in understanding exactly how the incident occurred.

In Homicide cases, crime scene investigation is not just the documenting of the physical evidence found, it is the Investigator or Prosecutor that must be able to explain through a comprehensive evaluation of all aspects of the crime scene investigation why certain pieces of evidence were found in the locations they were in.

A violent crime scene presents special aspects that the Investigator must be aware of. It's not just where evidence is found, but what can this evidence tell us how the incident occurred, where were victims and/or witnesses were located when injuries occurred and what might be the sequence in which events occur. The crime scene is merely a piece of the "puzzle" that must be evaluated with other components of the incident to thoroughly understand how a crime was committed.

Other pieces of this "puzzle" are but not limited to:

- Wounds or injuries received during the course of this event.
- Laboratory evaluation of the evidence recovered (Bullets, knives, blood stains etc.)
- Witness statements and/or interviews.

If the incident involves the death of an individual, the post mortem and autopsy of the deceased becomes a vital piece of the "puzzle". Location of wounds, directionality of these wounds, and determining entry and exits of wounds must be evaluated with all other components of the crime scene evaluation to assist the Investigator in determining the significance of each piece of evidence recovered.

Documentation of the crime scene is done through three (3) primary steps.

- Written or verbal description of the crime scene, including location of items of evidence.
- Photographs or videotape of the crime scene to depict exactly what was observed at the crime scene.
- Diagram of the scene with measurements showing the location of evidence. (This is done so that if the crime scene needs to be reconstructed, an accurate depiction of where and what was recovered can be done)

Failure to document the crime scene properly and precisely can hinder any prosecution and sometimes invalidate conclusion reached from the over all assessment of the crime scene.

As a consultant on crime scenes, I am often asked to evaluate the opinions and/or conclusions reached by Investigator and Prosecutors. In evaluating these opinions and/or conclusions I must rely on the documentation they relied on to reach their conclusions or opinions. If certain pieces of this "puzzle" are missing or documentation is not thorough then validation of these conclusions or opinions cannot be confirmed. Additional scene information becomes necessary to complete this evaluation process and if that information was not gathered at the time of the scene investigation, then only possible scenarios can be postulated.

The validity of possible scenarios cannot be performed without the proper processing and documentation of any crime scene. Attempting to reconstruct or evaluate a crime scene without proper documentation and without evaluating all available pieces of the "puzzle" and how they portray the sequence of events leads to misleading and inaccurate conclusions and/or opinions that can be detrimental to any prosecution or defense of a criminal offense.

Case Review

I have been provided with the following material for review:

- Trial Transcripts from the trials of Noel and Milton Montalvo
- York Police Department reports
- Autopsy report of Miriam Asencio
- Autopsy report of Nelson Lugo
- Crime Scene Photos
- Pennsylvania State Police Crime Lab Reports
- DNA reports from DNA Laboratories

Opinions:

- This crime scene does not indicate a second perpetrator

Nelson Lugo was found deceased from a stab wound to the chest in the kitchen area just inside the balcony door of the residence. The window pane to the door was broken and blood was observed on the glass and on the blinds covering the door window. This blood was identified by DNA analysis as that of Milton Montalvo.

Miriam Asencio was found deceased from sharp force and blunt force injuries to her head and neck in the bedroom adjacent to the kitchen area. Ms. Asencio was on the bed partially clothed.

DNA testing of blood from the crime scene indicated the presence of blood from both victims and from Milton Montalvo.

Questioned hairs found at the scene were identified as being similar to Milton Montalvo.

There was no blood or questioned hair from the crime scene attributed to Noel Montalvo.

- DNA analysis reveals no blood associated with Noel Montalvo

Witness Chris Arrotti testified that she did not have blood samples that she identified as consistent with Noel Montalvo. She did not identify Noel Montalvo there. (pgs 138-139)

Ms. Arrotti's testimony that she doesn't know Noel's blood was not there because numerous smears present did not permit her type of testing because they were of insufficient quantity is misleading. (National Academy of Science report on Strengthening Forensic Science in the United States: A Path Forward)

- Testimony of Detective Michael Hose that it's "not uncommon" not to find forensic evidence linking a suspect to this type of crime scene is in error.

Both Miriam Asencio and Nelson Lugo have injuries consistent with a struggle during the assault which resulted in their deaths. (Autopsy reports)

DNA and hair identified as belonging to Milton Montalvo was identified in numerous areas of this crime scene. With over 100 samples of blood taken from the crime scene (Testimony of Detective Hose pg. 68) and hair recovered from the bodies of both victims, along with finger prints recovered from the crime scene, if a second perpetrator had been present on the scene an experienced and properly

trained investigator would expect that there would be some type of forensic evidence linking the second perpetrator to this crime scene.

- Testimony of Detective Michael Hose in regards to blood spatter (pgs. 11-16 Volume IV) as a "Science" is inaccurate and misleading.

The National Academy of Science report on Strengthening Forensic Science in the United States: A Path Forward clearly indicates that blood stain pattern analysts are more subjective than scientific. Bloodstain pattern analysis cases are "prosecution driven or defense driven" with targeted requests that can lead to contextual bias on the part of the analyst.

- Incised wounds and stab wounds to Miriam Asencio and Nelson Lugo are consistent with a right handed assailant facing the victims.

Nelson Lugo's fatal injury is a stab wound to the left side of his chest that was described as going from front to back, with no significant up or down, left or right component penetrating approximately 3 ½ inches.

Miriam Asencio has multiple overlapping deep incised wounds on both sides of her neck. The wounds to her left side are deeper than the right and actually contact the spinal column at the C3 level. These wounds do not pass over the "midline" of the neck. The wounds are described as "sweeping" toward the anterior midline. This indicates a back to front movement. With the left side wounds being considerably deeper than the ones on the right would indicate a right handed assailant.

- No forensic or physical evidence was recovered from the crime scene placing Noel Montalvo at this crime scene.

Analysis of all the forensic evidence collected from the crime scene indicates only three (3) persons on the scene at the time the deaths occurred. DNA, hair and fingerprints were all linked to either the two victims or Milton Montalvo.

These opinions are based on the available information. Should additional information be obtained, I reserve the right to amend this report.

Sincerely,

R. Robert Tressel